Theo.

Relig. Theol.

DE OBLIGATIONE CONSCIENTIÆ

PRÆLECTIONES DECEM OXONII IN SCHOLA THEOLOGICA HABITÆ ANNO DOMINI M.DC.XLVII.

A

ROBERTO SANDERSONO

S. THEOLOGIÆ IBIDEM PROFESSORE REGIO POSTEA EPISCOPO LINCOLNIENSI.

WITH ENGLISH NOTES, INCLUDING AN ABRIDGED TRANSLATION,

BY

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EDITOR'S PREFACE.

BISHOP SANDERSON is generally considered, and with great justice, as one of the ablest and soundest of our Theological Moralists. His Lectures *De Obligatione Conscientiæ* were formerly much read; and went through many editions towards the end of the seventeenth century; often combined with the Lectures *De Juramenti Obligatione.* Even now, it would be difficult to mention any better example of the Ethical school which preceded the influence of Hobbes and Des Cartes. In these Lectures, Sanderson employs habitually and familiarly, the systems and terms of the Aristotelian school; but in his hands these technicalities become really instruments of an effective and methodical discussion of his subject. For instance, the definition of Conscience is very materially illustrated in the First Lecture, by considering Conscience as to its *Genus,* its *Subject* "*of what,*" its *Subject* "*in what,*" its *Object,* its *Primary Acts,* and its *Secondary Acts.* And the classification of the principal moral questions respecting the obligatory force of Human Laws, in Lectures VI, VII, VIII, IX, is reduced to a very convenient and philosophical form by considering Human Laws with reference to the Aristotelian distribution of Cause into four kinds, *Material, Efficient, Formal,* and *Final.* In this respect Sanderson has a great superiority over other writers of the same kind: for instance, Jeremy Taylor; who

in his "Rule of Conscience," with at least an equal display of technical method, is very deficient in philosophical precision and distinctness. Sanderson is also, no less than Taylor, very copious in his illustrations taken from ancient authors. Indeed it is difficult to believe that Taylor did not borrow some of his quotations and illustrations from these Lectures. They were delivered at Oxford in 1647, though not published till 1660. The Dedication to Robert Boyle is dated November 1659. The "Ductor Dubitantium or Rule of Conscience," is dedicated to Charles II. after the Restoration, but has a Preface dated October 1659. It is not likely, therefore, that Taylor borrowed from the printed work of Sanderson. But it appears, by Sanderson's Preface, that manuscript copies of these Lectures were in circulation before they were printed. At any rate, the coincidences between passages in the "Ductor Dubitantium," and passages in these Lectures are such as could not arise from chance. See, for instance, those marked in the following Notes; Lect. I, Sect. 2, 3, 4, 6, 9, 11, 12, 15; and especially, Lect. II, Sect. 1; a passage which must often have struck Taylor's admirers as an example of his great fertility of fancy and copiousness of quotation, but which appears to be in a great measure adopted from Sanderson.

In the Notes, to some of which I have just referred, I have attempted to give such an abridged translation of the Lectures that the English reader may be able to follow the argument. In the greater part of the work I have inclosed in [brackets] the additional portions of the Notes which I have added for the sake of further explanation and illustration;

but in the earlier portions this distinction has been, through oversight, neglected.

The references of the quotations to their proper sources have been verified and completed by the Rev. H. A. Holden, M.A. Fellow of Trinity College, by whom also the Indexes have been compiled. These useful and laborious tasks cannot fail to be considered as adding materially to the value of the work.

This work may be considered as an excellent and striking example of a certain period of our ethical literature, and in that point of view, possesses great interest for the student of Moral Philosophy. But it is also a work, even still, of no small moral value; for it would be difficult to discuss most of the moral questions which form the latter part of the work, in a more satisfactory manner than is here done. In saying this, we of course except the cases in which Sanderson maintains that doctrine, of the divine right of kings, which was then common in England, and which is now obsolete; but which does not vitiate other parts of his reasoning. The passages thus to be excepted are, for the most part, adverted to in the Notes.

W. W.

Trinity College,
Feb. 1, 1851.

BIOGRAPHICAL NOTE.

THE following dates respecting Sanderson's life may be acceptable to the reader. They are taken from the "New General Biographical Dictionary."

Robert Sanderson was born at Rotherham, in Yorkshire, on the 19th September, 1587, and educated at the grammar-school of his native town, and at Lincoln College, Oxford. In 1606 he was elected Fellow of his College; in 1611, admitted to Holy Orders; in 1613, 1614, and 1616, he was chosen Sub-rector of Lincoln College. In 1615 he published his *Logicæ Artis Compendium*. In 1617 he took the degree of B.D., and in 1618 he was presented to the rectory of Wibberton, in Lincolnshire; which he resigned in the following year, and was collated to the rectory of Boothby Pagnel, in the same county, from which place most of his works are dated. Soon after, he married the daughter of the Rev. Henry Nelson. About the same time he was made a prebendary of Southwell. In 1625 he was chosen one of the clerks in Convocation for the diocese of Lincoln; as he was also in all the subsequent Convocations during the reign of Charles I. In 1629 he became a prebendary of Lincoln. In 1631 the King appointed him one of his Chaplains in Ordinary. In 1633 he was presented to the rectory of Muston, in Leicestershire, which he held for eight years. In 1636, when the Court was entertained at Oxford, he was created D.D. In 1642 the King appointed him Regius Professor of Divinity, but he was prevented by the civil wars from entering upon the duties of the office till 1646, when he delivered at Oxford his Lectures *De Juramenti Obligatione*, and 1647, when he delivered the following course of Lectures. In 1647 and 1648, the King, then in captivity, was allowed to have Sanderson, along with other Divines, to confer with him on points of conscience. In 1648 he was ejected from his Professorship by the Parliamentary Commissioners, but continued to minister, though not undisturbed, at Boothby Pagnel. On the Restoration of Charles II. he was reinstated in his Professorship and Canonry at Oxford; and was soon after made Bishop of Lincoln. He was one of the Commissioners at the Savoy Conference in 1661. He died the 29th January 1663, in the 76th year of his age.

PRÆNOBILI VIRO,

HONORATISSIMORUM CORCAGIÆ IN HIBERNIA COMITUM

RICHARDI OLIM DEFUNCTI FILIO,

ET RICHARDI NUNC SUPERSTITIS FRATRI,

ROBERTO BOYLIO.

AVET in tuam (vir Honoratissime) fidem et clientelam se conferre hoc quicquid est opusculi, ut sub tui nominis præsidio prodeat in vulgus. At te igitur idipsum affero, lubens merito: Ad te, inquam, hominem, ut ex aliis audio, (et est perraro mendax in melius fama,) cum natalium splendore illustrem; tum generosæ mentis indole, amore literarum, humanitate, pietate, et omni virtutum genere multo etiam illustriorem: mihi tamen (delitescenti nimirum in parva casula suaviter, nec quid rerum foris geratur, præsertim ut nunc sunt tempora, multum sollicito) de facie nunquam, ante paucos menses nec de nomine quidem, adeoque ne nunc tandem, nisi sola munificentia, notum. Est tamen quod sperem, habiturum aliquam apud te gratiam tenue hoc munusculum: ex eo scilicet, quod me, jamdiu **rude donatum*, (proposito per virum insigniter doctum THOMAM BARLOUM, armarii Bodleiani in alma Oxoniensi Academia Protobibliothecarium, honesto salario) conatus es, *iterum antiquo includere ludo;* et tum sponte mea ad aliquid scribendum quod domo exeat pigrum satis,

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* [Horat. Lib. II. Epist. i. v. 2.]

tum factum jam, ut in senecta ætate par est, multo etiam pigriorem, in eandem arenam denuo pellicere. Bonum factum: quod in hoc tam luctuoso Civilium pariter et Ecclesiasticarum rerum statu, (nisi sit nefas statum dicere, quæ mera ἀκαταστασία sit, et perturbatissima rerum omnium confusio,) unus aliquis forte melioris luti, et alter repertus fuerit, qui tristes Musas Musarumque quocunque in genere alumnos, maxime qui veræ et Christianæ philosophiæ professores, spretos ubique et velut mundi retrimenta abjectos, curet alloquio aliquo, aut levamine solari. Si quid igitur (Deo Opt. Max. donante) posthac mihi in hoc genere scriptionis, hoc est, quod ad *Moralem Theologiam* pertineat, tentatum editumque fuerit, sive id Latino idiomate fiat, sive (quod sentio esse plerisque nostratium aliquanto optatius) vernaculo, quod aut in publicum utile, aut privato cuivis homini, ad vitam recte instituendam, moresque ex divinæ Legis et Evangelii præscripto efformandos, usui esse poterit: id tibi plurima ex parte acceptum ferri debere, et agnosco lubens, et libere profiteor; qui mihi et ut auderem auctor fuisti et ut alacrius pergerem adjutor. Perge et tu, vir dignissime, benefacere: hoc est, quod facis facere; literas ornare, literatos fovere, pietatem colere, fidos tibi ex infidi Mammonæ impendio amicos comparare: ut ex ubere bonorum operum in hoc seculo semente, ingens tibi surgat æternæ beatitatis messis in seculo futuro, *Amen.*

Bothebiæ Paganellorum
in agro Lincolniensi.
x *Cal. Decemb.* M.DC.LIX.

BENEVOLO LECTORI

Εὖ πράττειν.

IN primo statim *Limine* mihi conveniendus es, quisquis es, *amice Lector*, orandusque, ut patiare te paucis ante edoceri, quam in ipsas *ædes* intuleris pedem, quæ nos *causa*, ad isthæc quæ nunc damus *evulganda*, potissimum impulerit. Equidem, si per alios licuisset, inedita malui. Cui rei vel hoc unum satis magno argumento esse posset; quod *Prælectiones*, aliquot ante annos mihi commentatæ, toto plus decennio ne pluteum quidem servaverint; sed sparsim in angulis inter rejectitias et nihili chartas neglectæ jacuerint: nisi mihi aliud suppeteret gravioris momenti argumentum, et quod suo se indicio prodit, *Operis ipsius imperfectio.* Scriptorem enim oportet, qui sapit, dignitatique suæ et existimationi consultum cupit, inceptum opus ad umbilicum perducere; nec prius de emittendo cogitare, quam fuerit (ut cum * *Cicerone* loquar) *aptum undique, perfectum, expletumque omnibus suis partibus et numeris.* Siquidem frustra inde *laudem* speres, unde pulchre tecum actum putes, si pro laude *veniam* mereare.

Quid ergo? *Amicine in causa?* Qui solent ultro currentem in hæc fata fortius impellere, cunctanti stimulos subjicere? Ne hoc quidem dederim. Commune enim illud plerorumque scripturientium confugium, (amicorum dico hortatus et vota,) ut concedam habere posse nonnunquam *honestæ excusationis* locum, sic mihi nunquam habere visum est justæ et *idoneæ causæ* instar. Sed nec defuere tamen (sic

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* De Natura Deorum, [Lib. II. cap. xiii. *extr.*]

enim fieri amat,) ἐργοδιῶκται, qui rogarent, et (ut **Fabii* verbis utar) *quotidiano convitio efflagitarent*, ut quæ ipsorum *auribus* inter prælegendum haud ingrata fuissent, omnium *oculis* legenda subjicerem. Ego contra, non ignarus quanto esset acrius *oculorum* quam *aurium* judicium, id me facturum constanter pernego. Instare illi vehementius, et urgere porro; leniter etiam, ut fit, succensere: Ego, cui decretum erat esse pertinaci, non muto. Quicquid enim illi intentarent, aderat mihi semper in promptu quod opponerem: non esse emittendum *opus inchoatum*, necdum dimidia, forte an vix tertia sui parte, absolutum. Sed nec illis minus in promptu quod regererent: *Quid ergo cessas*, inquiunt? *Quin accingis te operi, et quam occœpisti telam pertexis ocyus?*

Quid ego hic responderim, et fateri pudet, nec licet reticere. Respondi tamen, (quod et nimio plus verum est,) Nisi aliqua cogat *necessitas*, quæ mihi tunc *Exprofessori* nulla, fieri non posse. Nimirum, ut ignavus miles, quem *sola fortem facit desperatio*, tum demum acris fertur ad pugnam, cum nullus reliquus est effugio locus: ita mihi ingenium est. Des otium spatium, tempus!

Nil fit.
Vexantur frustra calami †,

diffluit mens, vagatur, excurrit, torpet. In arctum cogas! Subsistit, excitatur, recolligit vires; quasque habet, quandoquidem exerto est opus, exerit universas: et ut verbo dicam, quod agi necesse est, *hoc agit.* Ut solis radii, qui laxo liberoque cœlo diffusi sic modice calefaciunt vix ut sentias, iidem in concavi speculi umbonem, velut in centrum coacti adductique, acriter urunt. Multo usu a prima lanugine ad hanc canitiem edoctus didici, quam non sit vanum illud Pythagoræ hemistichium,

... δύναμις γὰρ ἀνάγκης ἐγγύθι ναίει ‡.

Quod ignavæ mentis vitium, etsi nonnullis fortasse videri

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* Quintilian. Epist. ad Tryph. [1].
† Horat. II. Sat. iii. [vv. 4, 5, ubi tamen legitur '*Nil est. Culpantur*,' *etc.*]
‡ Aur. Carm. [v. 8.]

possit habere modestiæ speciem aliquam, mihi tamen una hac idonea excusatione defendi posse videtur, quod sit certis quibusdam hominibus, (et ego in hoc censu,) *ἐμφυὲς καὶ συγγενὲς ἦθος*, ita congenitum insitumque ab ipsis cunabulis, ut frustra sit, quisquis ex illo numero id ulla speret a se posse, vel arte corrigi, vel industria superari. Sed de hac re, tam insuavi, satis superque.

Instabis forsitan, (nihil enim adhuc certi diximus, et eodem usque revolvimur): *Si, uti dicis, tam fueris et tua sponte piger, et adversum amicos contumax; undenam tandem ista editio?* Non aliunde sane, inquam, quam ex ipsa hac, de qua proxime sermo fuit, quæque in rebus humanis longe lateque dominatur, *Necessitate.*

> Λόγος γάρ ἐστιν οὐκ ἐμὸς, σοφῶν δ' ἔπος,
> Δεινῆς ἀνάγκης οὐδὲν ἰσχύειν πλέον.*

Ne te ultra morer, rem totam aperiam, et paucis. Fregit omnem illam quam dicis contumaciam, uno quasi ictu, Jacobus Allestry, *Londinensis Bibliopola.* Scripsit ille datis ad me literis, delata ad se istarum *Prælectionum* bina apographa penes ipsum tunc esse, et domi suæ asservari; egisse etiam secum qui ea attulerant, ut ipso curante, vel saltem procurante, typis mandarentur, quod nisi me consentiente, negavit se facturum. Submonuit tamen, quum alia etiam alibi extarent exemplaria, caveri vix posse, si ipse negligerem, ne ab alio quopiam, me inscio, ederentur. Laudavi, imo amavi, in homine, et ante id tempus mihi penitus ignoto, animi candorem; et ex eo genere, quibus fere unius lucri studium est, æqui reverentiam. Rescripsi itaque, mitteret modo ad me e binis exemplaribus alterum, quod scilicet ipsi videretur elegantius emendatiusque descriptum, me interim cum animo putaturum meo, quid mihi facto sit usus. Quid multa? Mittit, lego, perpendo: †*ἑλικτὰ πάντα, κοὐδὲν ὑγιές.* Præter eas enim quæ ab exscriptore mendas passim innumeras; eorum etiam, quæ a meipso prima illa medita-

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* Euripid. Helen. [vv. 513, 514.]

† [Euripid. Andromach. v. 448.]

tione, dum festinaret calamus, scripta fuerunt, non pauca incudi denuo reddenda videbantur. Hinc mihi duram sensi obortam molestiam, quæ tamen perferenda erat; totius operis de novo describendi tædium. Pertuli, descripsi, perfeci; ut *potui*, et (si ultra vires nemo debitor est) ut *debui:* Si non ut *volui;* hanc unam rem a te, ut æquam peto; imo ut (facienti quod in se est) debitam postulo, *Veniam.*

SUMMARIUM.

PRÆLECTIONIS PRIMÆ SUMMARIUM.

Sect. 1 Suscepti operis consilium.
2 Conscientiæ Definitio proponitur.
3 Definiti Nomen.
4 sqq. .... ejusque nominis origo.
7 sqq. Ex vocis [*Scientia*] ambiguitate.
10 sqq. Ex illustrata et vocis [*Conscientia*] homonymia.
14 De Conscientiæ Genere.
Opinio Prima, quod sit *Actus*, rejicitur.
15 Opinio Secunda, quod sit *Potentia*:
16 ... quæ etiam improbatur.
17 Opinio Tertia, quod sit *Habitus* Innatus.
18 sive *Facultas;* statuitur:
19 et explicatur.
20 Conscientiæ *Subjectum* οὗ
21 et ἐν ᾧ.
22 sq. Conscientiæ *Objectum*.
24 sqq. Conscientiæ *Actus:* Primarius;
27 et Secundarii.
28 Definiendo pleraque obscurari magis, quam illustrari.

PRÆLECTIONIS SECUNDÆ SUMMARIUM.

Sect. 1 sq. Conscientiæ respectus duplex.
3 Regulæ Conscientiæ fallaces et deceptoriæ.
4 Ad bonitatem Actus non sufficere bonam Intentionem;
5 Probatur Primo, ex ipsis Apostoli Verbis.
6 sqq. Secundo, a Natura Mali.
9 Tertio, a conditionibus ad bonitatem actus requisitis.
10 sq. (Objectioni interim occurritur.)
12 Quarto, a Divinæ Legis Perfectione.

13 Probatur Quinto, a Dei vindicta, punientis Legis suæ (etsi bona intentione factam) transgressionem.

14 Sexto, ab incommodis contrariæ sententiæ.

15 sq. COROLLARIUM PRIMUM.

Zelo gloriæ Dei ne ad illicita perpetranda feramur, cavendum.

17 sq. SECUNDUM.

Non esse admittendum aliquod peccatum nostrum, ut impediatur majus alienum.

19 sq. Liceatne saltem alteri suadere minus peccatum, ut majus impediatur.

21 sqq. TERTIUM.

Non esse malo malum pellendum.

TERTIÆ PRÆLECTIONIS SUMMARIUM.

SECT. 1 Institutæ Methodi ratio.

2 sqq. Pauli Petrum reprehendentis factum.

6 sq. Non sunt omnia piorum facta, quæ in sacra Scriptura nude recitantur, imitanda.

8 sqq. ... Ne quidem ea omnia, quæ et laudantur.

12 sq. In exemplis applicandis proclive est errare.

14 sq. Perversæ imitationis aliquot exempla.

16 sqq. Argumentum ab exemplo, contra ingeniculationis ritum in sacra Cœna percipienda, examini subjicitur.

23 sq. Quis sit Exemplorum usus.

25 sqq. Cujusquam hominis placitis intutum est conscientiam subjicere.

28 Pontificis Romani in conscientias hominum tyrannis.

29 sq. Aliorum judicio nec nimium tribuendum,

31 nec parum.

QUARTÆ PRÆLECTIONIS SUMMARIUM.

SECT. 1 sqq. Quæ sit illa Conscientiæ *Regula*.

4 sq. ... Cui debeat esse conformis; inquirendum.

6 sqq. Eorum quæ Conscientiam obligant varii gradus.

9 sqq. CONCLUSIO PRIMA.

Deus solus directum habet in Conscientias imperium.

12 sq. SECUNDA.

Proxima Conscientiæ Regula, recta Ratio.

14 sqq. Conclusio Tertia.

Scriptura non est adæquata Conscientiæ Regula.

18 sq. (Nihil hinc detractum Scripturæ perfectioni.)

20 sqq. Quarta.

Adæquata Conscientiæ Regula, voluntas Dei qualitercunque patefacta.

23 ... quæ eadem fundamentum est Obligationis.

24 sq. Hujus Regulæ partes tres :

i. Lumen menti innatum ; Lex Naturæ.

26 ii. Lumen menti illatum; Verbum Dei Scriptum,

27 sqq. {in Lege veteri, sive Mosaica,

32 sqq. {in Lege nova, sive Evangelica.

35 iii. Lumen acquisitum : quod

36 discursu Rationis constat,

37 et Auctoritate Ecclesiæ.

QUINTÆ PRÆLECTIONIS SUMMARIUM.

1 sq. Ante dictorum recensio.

3 sq. *Legis* nomine, quid veniat intelligendum ;

5 Et quid *Obligationis*.

6 Quæstio ; obligentne Leges humanæ Conscientiam.

7 sq. Conclusio Prima.

Leges injustæ non obligant Conscientiam.

Ea explicatur.

9 Et confirmatur.

10 Conclusio Secunda.

Lex humana potest priori obligationi superinducere novam obligationem.

11 sqq. Conclusio Tertia.

Lex a non habente Legitimam potestatem lata non obligat.

14 sqq. Quod sit subditi officium, ubi de facto, qui jus non habet imperat, fuse disquiritur.

22 Conclusio Quarta.

Leges humanæ per se obligant in generali.

23 In particulari etiam, ex consequenti :

24 sqq. quod varie confirmatur.

31 sqq. Objectioni occurritur, quæ, a Christiani hominis libertate ;

36 .... itemque ei, quæ ab uno Legislatore Deo et Christo ducta est :

37 .... ut et reliquis, quæ contra hanc sententiam disputantur.

SEXTÆ PRÆLECTIONIS SUMMARIUM.

SEPTIMÆ PRÆLECTIONIS SUMMARIUM.

OCTAVÆ PRÆLECTIONIS SUMMARIUM.

NONÆ PRÆLECTIONIS SUMMARIUM.

DECIMÆ PRÆLECTIONIS SUMMARIUM.

TOTIUS INSTITUTI OPERIS

ΣΧΗΜΑΤΙΣΜΟΣ

SIVE

DIAGRAPHE.

- **De Conscientiæ.**
  - Natura quoad
    - Quid Nominis
    - Quid Rei. — *Præl.* I.
  - Obligatione
    - Passiva: h. e. de iis rebus quæ obligant Conscientiam: ubi
      - Rejiciuntur regulæ fallaces et deceptoriæ
        - Agentis bona Intentio. — *Præl.* II.
        - Aliorum
          - Exempla
          - Dogmata. — *Præl.* III.
      - Statuuntur ea quæ vere obligant Conscientiam;
        - Virtute propria, per se et non per aliud: voluntas Dei patefacta, ut adæquata Conscientiæ Regula. — *Præl.* IV.
        - Virtute legis Divinæ
          - Per se; et ex intuitu Justitiæ: idque vel
            - Ex auctoritate superioris auctoritatem habentis, ubi de legum Humanarum Obligatione.
              - in Genere. *Præl.* V.
              - In specie; ex parte Causæ
                - Materialis. *Præl.* VI.
                - Efficientis. *Præl.* VII.
                - Formalis. *Præl.* VIII.
                - Finalis, ubi de
                  - Fine legum in Genere. — *Præl.* IX.
                  - Sensu illius dicti, *Salus Populi suprema Lex.* — *Præl.* X. *Reliqua desiderantur.*
                  - De aliis pertinentibus ad causam finalem scilicet de
                    - Privilegiis.
                    - Dispensabilitate Legum.
                    - Interpretatione Legum.
            - Ex actu propriæ voluntatis, ubi de
              - Votis Juramento, Promissionibus, Pactis et fœderibus, Contractibus, etc.
          - Per accidens; et ex intuitu Caritatis.
    - Activa: h. e. quatenus in agendo obligat Conscientia
      - Recta.
      - Erronea.
      - Dubia.
      - Scrupulosa.

Appendix de prædictarum Obligationum inter se Collatione quoad vim obligandi.

PRÆLECTIO PRIMA.

IN QUA PROPONITUR ET EXPLICATUR CONSCIENTIÆ DEFINITIO.

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1 Cor. II. 11.

Quis hominum novit quæ sunt hominis, nisi Spiritus hominis qui est in ipso?

I. PERMAGNAM esse[a] *vim conscientiæ* in utramque (fiduciæ metusque) partem, *et prudentes viri olim* docuerunt, et satis attestatur proprius cujusque sensus et experientia. Quo magis dolendum est, plerosque mortalium, *dum rerum mediocriter utilium* Scientiam anxie venantur, in tam crassa interim *conscientiæ* suæ ignoratione versari. Qua tamen non est alius quisquam, aut *monitor* fidelior, aut *accusator* diligentior, aut *testis* gravior, aut *judex* incorruptior, aut *solator* jucundior, aut *hostis* importunior. Ut itaque decantatum illud jam olim γνῶθι σεαυτὸν studiosorum auribus et mentibus instillarem, ipsosque ab *inanis scientiæ* nimia cupiditate modice diverterem, et ad majorem *Conscientiæ* curam cultumque sensim invitarem; existimavi operæ me facturum pretium, si in *Conscientiæ Naturam* et *Usum* paulo diligentius inquirerem, et quæ mihi in eam rem scitu digna meditanti occurrissent, vobis auditoribus pro officii mei ratione ex hoc loco communicarem. Statui igitur hac prælectione *Conscientiæ Naturam* definiendo explicare: expositurus futuris lectionibus (si Deus concesserit) *Conscientiæ*, maxime qua facienda spectat, *Usum et Officia*, idque per *duplicem* respectum; *priorem* scilicet ad normam legis cui *subesse* debet, *posteriorem* ad actus humanos quibus nata est *præesse*.

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[a] Cicero pro Milone [c. xxiii. § 61.]

1. We may remark in this Section, the enumeration of the principal offices or acts of conscience: it warns us before any deed contemplated; accuses us after an evil deed done; bears witness concerning each of our actions; judges us, acquitting or condemning as the deed is good or evil; consoles and comforts us, if it be good; torments and punishes us, if it be evil.

II. Sed quum sit *duplex methodus definitiva*, altera συνθετικὴ et ad *Compositionis* modum, quæ ex præmissa *singularum partium* expensione, *integram* tandem colligit *definitionem;* altera quasi ἀναλυτικὴ et per modum *Resolutionis*, quæ propositam ab initio *integram definitionem* postea *membratim* aperit et explicat: etsi *prior* illa videri fortassis possit *ordini naturæ* convenientior, delegi tamen potius *posteriorem*, quæ visa est mihi *ad docendum* aliquanto commodior. Sic ergo breviter definio Conscientiam: *Conscientia est facultas, sive habitus intellectus practici, quo mens hominis per discursum rationis applicat lumen quod sibi adest ad particulares suos actus morales.* Ubi consideranda veniunt suo ordine; primo, *Definiti nomen*, nimirum ipsa *Conscientiæ* vox: deinde singula *definitionis membra;* illa videlicet omnia, quæ in definiendis *primæ* vel *secundæ speciei* Qualitatibus adhiberi solent, *Genus, Subjectum, Objectum*, et *Actus Proprius*.

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2. The *analytical* method which the author professes to adopt, in declaring the nature of Conscience, is characterised by his stating the whole Definition, before he proves the propriety of the several parts of it. The Definition is, in fact, rather a Theorem, which is to be proved, and which is enunciated previous to the proof. In this way, his *analytical* method agrees with what in Geometry is called the *synthetical* method.

In speaking of the "first or second species of Qualities," our author has reference to Aristotle's *Categories*, and to his own explanation of them in his *Logicæ Artis Compendium. Quality* is one of the ten Predicaments; (*Substance, Quantity, Quality, Relation, Action, Passion, Place, Time, Position, Habit;*) Quality is divided into four species, ἕξις, δύναμις, πάθος, σχῆμα; *Habit, Power, Affection, Form.* See Arist. *Categ.* c. 5.

The author's Definition or Description of Conscience contains, as we shall hereafter see, twelve distinct elements, which he subsequently examines and establishes in order, as we shall afterwards see. It stands thus: Conscience is a *Faculty, or Habit of the practical Intellect, by which the mind of Man doth, by Discourse of Reason, apply the Light which is in it, to its own particular Moral Acts.*

Jeremy Taylor, also, in Chapter I. of his "Rule of Conscience," adopts this same "analytical" method; and gives a Definition or Rule consisting of several phrases, each of which he afterwards illustrates separately. His statement is this: (Chap. I. Art. 1.)

Rule I. (a) *Conscience is the Mind of a Man* (b) *governed by a Rule, and* (c) *measured by the Proportions of Good and Evil,* (d) *in Order to Practice;* (e) *viz. to conduct all our Relations and Intercourse between God, our neighbours and ourselves; that is, in all moral Actions.*

III. *Definiti nomen* quod attinet, observarunt viri docti non reperiri in *Veteri Instrumento* vocem Hebræam, quæ *Conscientiam* peculiariter et præcise significet: sed ex usu loquendi Hebræorum, quoties de *Conscientia* sermo est, ad eam denotandam assumi fere duarum dictionum alterutram לב sive לבב et רוח quarum illam proprie *Cor*, hanc *Spiritum* significare sciunt omnes. Illud *Salomonis Proverb.* iv.[b] *Supra omnem custodiam custodi cor tuum,* perinde est ac si dixisset, *Conscientiæ* suæ cuique præcipua cura esto. Itidem *Eccles.* vii.[c] pro eo quod habet vetus interpres Latinus, *scit conscientia tua, quia et tu crebro maledixisti aliis;* et Tremellii versio, *Conscius est animus tuus;* in textu Hebraico est ידע לבך i. e. *Novit Cor tuum.* Quin et in *Novo Testamento,* (præsertim apud *Johannem Apostolum* in cujus *Scriptis* multi sunt passim *Hebraismi*) *καρδία* aliquoties pro *Conscientia* ponitur, ut 1 *Joh.* iii,[d] *Si cor nostrum non condemnet nos.* Cor nostrum, *i. e. Conscientia* nostra: cujus utique proprium munus est stantem pro tribunali reum *condemnare* vel non *condemnare.* Unde illa trita satis *Bernardi* et aliorum allusio, *Conscientia quasi cordis scientia. Spiritus* etiam nomine in sacris scriptoribus, *Hebræis* pariter et *Græcis,* frequenter appellatur *Conscientia.* Afferam duo tantum loca; quid enim opus est pluribus, cum isthæc sint apertissima? *Ex veteri Testamento Salomonis* dictum *Prov.* xviii. 14. *Spiritus*

[b] Prov. iv. 23. [c] Eccles. vii. 22. [d] 1 John iii. 21.

3. Of course it is very natural that the language of common practical life, such as is employed in the Old and in the New Testament, should not be furnished with words which distinguish the faculties, powers, and habits of man, in such a manner as to conform with the systems of philosophers, even when these are quite reasonable and true. The analysis and the method which are necessary in philosophy, are not needed for the purposes of Scripture.

As our author says, the Hebrew, in order to denote the *Conscience,* speaks either of the *Heart* or of the *Spirit* of man: and, in like manner, the New Testament uses the *Spirit of a Man* for his *Conscience.* 1 Cor. ii. 11.

But such terms as *Heart, Mind, Soul, Spirit,* in Scripture, though used with discrimination, are not appropriated with metaphysical exactness to distinct faculties and powers in man.

Taylor (Chap. I. Art. 8) gives the same Hebrew words with the same interpretation, and the quotations, Eccles. vii. 22, Prov. xviii. 14, 1 John iii. 21.

viri sustentabit infirmitatem ipsius: Spiritum autem confractum quis sustinebit? Quasi dicat, Qui *integra* est *conscientia* quæcunque tandem ipsi contigerint mala, forti ea animo perferre poterit; sed est *fracta* et *afflicta conscientia* onus importabile. *Ex novo Testamento* pariter, illud Pauli (præsentis diatribæ *Thema* et fundamentum) 1 *Cor.* ii. 11. *Quis novit quæ sunt hominis, nisi spiritus hominis qui est in eo? i. e.*, nisi propria cujusque *Conscientia.*

IV. *Latinorum* autem *Conscientia*, et quæ ei per omnia respondet *Græcorum* Συνείδησις, a *Sciendo* aperte utraque nomen accepit. Sed simplici *Scientiæ* adjecta utrobique in compositione *Præpositio*, amplius aliquid indicat in his vocibus et ulterius, quam in ipso *Scientiæ* vocabulo, contineri: quod quid sit ab authoribus varie explicatur. Missis duabus illis rationibus, quæ a nonnullis efferuntur, (quæ si naturam *rei ipsius* spectemus retineri fortassis possunt, ut *allusiones* haud omnino incommodæ; ad limam vero et ἀκρίβειαν legitimæ *notationis* revocatæ, *inepte* protinus reperientur, nec dignæ quibus immoremur,) Conscientia quasi *cordis Scientia;* et Conscientia quasi *concludens Scientia:* illud imprimis certum est, duo hæc vocabula Συνείδησιν et conscientiam, ultra nudam *Scientiæ* notionem, dicere etiam *ordinem* quendam et relationem istius *Scientiæ* ad aliud. Quippe ea vis est particularum Σὺν et *Con*, ut in compositione significent rerum plurium *conjunctionem* quandam et associationem: ut sit *Conscientia*, quasi *conjuncta* multorum *Scientia.* Quod et ipsium *dupliciter* contingit intelligi. Potest enim dici *Multorum* scientia, vel ut *subjectorum*, quasi dicas *Multorum Scientium* Scientia; nempe cum *multæ personæ* eandem rem pariter sciunt: vel ut *Objectorum*, quasi dicas *Multorum Scitorum* Scientia, nempe cum eadem persona *multas res*

Also (Art. 24) he quotes from Hugo de St Victore, that *conscientia* is *cordis scientia*, adding, "It is so, but certainly this was not the ἔτυμον and original of the word."

4. That Conscience is something more than merely Science or Knowledge, appears by the form of the word. In English, the word *Conscience*, (as Mackintosh has remarked,) always suggests a moral judgment, in addition to a mere *Consciousness; Conscience* in French appears often to go no further than this latter meaning.

Taylor (Chap. I. Art. 23) also speaks of *Conscience* as derived from *Science*, "but there must be a knowing of more together."

pariter scit. Sive hoc, sive illo modo accipiatur vox *Conscientiæ;* reddi potest ratio nominis, (*sive rem ipsam* spectemus, sive *usum loquendi* apud probatos authores,) nec aliena multum, nec incongrua.

V. *Primo* enim, cum *multi* idem sciunt, et *Conscire* dici possunt, et *Conscii* dici solent. Sic *conscii conjurationis Catilinariæ* dicti sunt, quos ille in sceleris societatem delegit, et consilii sui participavit: *Et conscius arcanorum Regis* dicitur, cui cognita sunt et concredita occulta ipsius consilia. —[e]*Ascitus in conscientiam facinoris,* in Annalibus Taciti. [f]*O si conscius esset hic Avitus,* in Epigrammatis Martialis. [g]*Conscia Matri Virgo fuit,* in Satiris Juvenalis. *Meorum omnium consiliorum periculorumque testis conscius et adjutor,* in orationibus Ciceronis. Infinitum esset omnia colligere, quæ in hanc rem inter legendum optimæ notæ Scriptores passim occurrent. Sed isthæc satis: nisi forte a me exigitis, ut aliquid saltem quod huc facit a *Grammaticorum* lacunis depromam. Fiet: non quod tanti valere debeat apud nos istorum hominum authoritas, sed quod hisce in rebus Dictaturam sibi, quasi jure quodam suo, arrogare soleant. *In hoc differunt Scius et Conscius* (*Nonium* auditis): *Scius secum, Conscius cum alio scius est.* Ex hac vocis originatione, qui *Conscientiam* dictam putant quasi *cum alio scientiam,* non aliam assignare poterunt sententiæ suæ rationem idoneam, quam quod non *homo solus* novit quæ sunt a se facta, sed et *Deum,* qui scrutatur corda et renes, habeat omnium operum suorum, imo et abditissimarum cogitationum *conscium* testem et inspectorem. *Res* omnino certissima, quicquid de *voce* fiat. *Ecce in cœlis testis meus est, et conscius meus* (συνίστωρ μου) *in excelsis, Job.* xvi. 19. Beatus etiam Paulus, *Rom.* ix. 1. cum Christum advocasset *testem* veritatis eorum quæ mox dicturus erat, subnectit continuo συμμαρτυρούσης μοι τῆς συνειδήσεως, *testimonium simul perhibente mihi conscientia.*

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e [Hist. I. 25.] f Martial. XII. 24. g Juvenal. Satir. XIV. [v. 28.]

5. It is true that *Conscii* in Latin is, as our author says, applied to persons who have a *common* knowledge of a design or event; but in the sense of *Conscientia* which we consider in this work, the knowledge appears to be conceived as common to the man in his two capacities, the man known, and the same man knowing. The author's notion that *Conscience* implies a knowledge which we have in common with God, is rather fanciful than solid.

Ac si dixisset οἶδεν ὁ Χριστὸς, σύνοιδα κἀγώ· *Scit* Christus, ego etiam *conscio*. Μαρτυρεῖ ὁ Χριστὸς, συμμαρτυρεῖ ἡ συνείδησις: *testatur* Christus, *contestatur* et conscientia. Esto igitur hæc *prima* vocis ratio: *Conscientiam* ex eo dici, quod facta hominis sint *ipsi* cognita simul, et *Deo*.

VI. Altero modo dicitur *conjuncta plurium Scientia*, velut *Objectorum*, sive *Scitorum*: cum scilicet unusquispiam *plura* simul scit, vel (quod eodem recidit) *plures notitias*, distinctas licet, *conjungit* tamen et invicem applicat. Unde oritur *secunda* vocis ratio, quæ placuit *Thomæ* et plerisque *Scholasticorum*; et, quod ad eruendam *Conscientiæ* naturam et vim facem præferat haud inutilem, alteri illi jam dictæ merito præferenda videtur: nempe *Conscientiam* propterea dici, quia *scientiam scientiæ conjungit*; scientiam sc. *Universalem* sive *Juris*, scientiæ *Particulari* sive *Facti*, applicando hanc ad illam. Uno et altero adducto exemplo rem illustrabo, 1 *Sam*. xxiv. 6. *Davidem*, dicitur, *cor ipsius cecidisse*, postquam alam vestimenti *Saulis* abscidisset in spelunca: hoc est, pupugit eum *conscientia sua*. Putemus nimirum *Davidem* apud animum suum ita locutum; *Scio* non debere *vim* afferri sacræ *personæ Regiæ*, *Scio* etiam id nuperrime a me factum quod a *vi inferenda* perparum abesse videtur: vereor itaque ne fecerim quod *forte non debuerim*, et gratias ago Deo meo qui manum meam abstinuit ne facerem quod *certe non debueram*. Sic *Judæ* proditori objecit *conscientia sua*: *Nosti* dominum non fuisse *prodendum*, et idem *nosti* te eum turpiter *prodidisse*. Accedente hunc in modum universali illi *Juris notitiæ*, quæ est in mente, *Facti* etiam particularis (admissi scilicet, vel admittendi) *notitia*, eique *conjuncta* et *applicata*, et cum ea collata, exsurgit totum illud quod dicimus *Conscientiam*. Firmant hanc nominis rationem id genus locutiones, quæ per modum *reciprocationis* efferuntur, et sunt in hoc genere frequentissimæ: cujusmodi sunt Isocraticum

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6. The notion here commended, that *Conscience* implies a combined knowledge of the Universal Law and of the Particular Fact to which it applies, is further developed subsequently; where these two elements of Conscience are termed *Synteresis* and *Syneidesis;* or, as we may describe them in English, *Conscience the Law*, and *Conscience the Witness*. See *Elements of Morality, &c.* Art. 264, 265.

Taylor also (Chap. I. Art. 24) adopts from Aquinas, that "Conscience is a conjunction of the universal practical law with the particular moral action."

illud[h], ἂν τοὺς ἄλλους λάθῃς, σεαυτῷ συνειδήσεις, *Utut alios latere possis, tute tibi conscius eris:* Horatianum itidem illud[i], *Hic murus aheneus esto, Nil conscire sibi,* et Virgilianum[k], *Mens sibi conscia recti:* Paulinum illud denique (ne sit opus plura, et aliunde, congerere,) οὐδὲν ἐμαυτῷ σύνοιδα, *Nihil mihi conscius sum,* 1 *Cor.* iv. 4.

VII. Satis jam constare puto *nominis rationem,* seu quis illam prætulerit, seu magis hanc, sive utramque pari loco habeat. Nam quas adducunt alias rationes pro ingenio quisque suo e plebe *Scholastici,* dilutiores fere sunt quam ut debeant cursum nostrum (quibus multa dicenda supersunt) morari. Pergo itaque ad vocis ὁμωνυμίαν aperiendam, unde orta mira illa apud authores in definienda *Conscientia* discrepantia, usque adeo ut de *primo definitionis termino* (quodnam sc. sit ipsius *genus*) magna sit et difficilis admodum controversia. Ut itaque tollatur e medio illa ambiguitas; illud imprimis observandum est, tantam esse virium mentis (nempe *Potentiarum, Habituum,* et *Actuum*) inter se naturæ *cognationem,* tamque arctam quoad usum et exercitium, *conjunctionem* sive connexionem; ut non solum *vocabulorum appellationes,* sed et *reales* singulorum *proprietates* et officia, reliquis promiscue et indiscriminatim attribui soleant; idque non in *exotericis* tantum *Poetarum, Oratorum,* aliorumque humanioris literaturæ authorum, (quibus licentius loqui permissum est,) sed et in *dogmaticis Philosophorum et Scholasticorum* Scriptis, quibus non licet esse tam disertis. Quantumvis igitur arduum semper habitum est et difficile, res natura usuque *conjunctas,* suis quasi certis *limitibus definire* et distinguere; ad *Conscientiæ* tamen vocem quod attinet, quæ et

[h] Isocr. ad Demonic. [§ 16.]
[i] Horat. I. Epist. 1. [v. 60.]
[k] Virgil. Æneid. I. [v. 604.]

7. The inquiry on which our author now enters, whether *Conscience* be a *Power*, a *Habit*, or an *Act*, obviously has its origin in Aristotle's Inquiry, in the Nicomachean Ethics (II. 5) whether Virtue be an *Affection*, a *Power*, or a *Habit* (πάθος, δύναμις, ἕξις;) and is conducted in a manner much resembling that. See also Art. 2, of these notes.

There is great weight in his remark here made, that the attributes of the mind, that is, the Powers, Habits, and Acts, are so nearly related in nature, and so closely conjoined in their use and exercise, that it is difficult to avoid confounding, not only their names and appellations, but also their real properties and offices.

He adds that as *Conscience* = *Con-science* is a kind of *Science* or Knowledge, we must first examine what Science or Knowledge is.

Scientia quædam est, et ab ea dicta, non parum nobis adjumento fuerit vocis *Scientiæ* ὁμωνυμίαν paulo diligentius aperuisse; ut *ex simplicis* vocabuli multiplici usu, *compositi* nominis ambiguitas rectius et penitius intelligatur.

VIII. *Primo* ergo (*ut Habituum nomina familiariter transeunt in sua objecta :*) Scientia *dupliciter* sumitur; *formaliter*, et *objective.* Quemadmodum enim de *Fide* distinguere solent Theologi, aliam esse *Fidem qua credimus*, quæ est *habitus fidei* in mente existens; aliam *quam credimus*, quæ est *res fide credita*, velut objectum prioris, et ei extrinsecum quid; quarum illa dici potest *fides formaliter* sumpta, hæc *objective :* pari omnino ratione de *Scientia* distinguere licet, et consequenter de *Conscientia.* Utramque scilicet sumi vel *proprie et formaliter*, pro ipso mentis habitu quo rem aliquam *scimus vel conscimus ;* vel *improprie et objective*, pro re illa quam *scimus vel conscimus.* Quo posteriore et improprio sensu, *Lex* illa quæ cordibus inscripta est velut recte vivendi regula dici potest *Conscientia.* Et in hoc sensu intelligendum est illud *Damasceni* in Scholis pervulgatissimum, *Conscientiam esse legem mentis ;* quum tamen *Lex* mentis non sit proprie et formaliter *Conscientia*, sed potius *Conscientiæ objectum*, aut adæquatum, aut partiale.

IX. *Secundo*, cum ad animam pertineant *tria* hæc, dis-

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8. *Science* is understood in two senses, which our author distinguishes as *formal* and *objective.* Some modern readers would understand the distinction better if, for these terms, we were to substitute *subjective* and *objective:* others would be repelled by either of these technical modes of expression. Yet the distinction is a real and important one, and is not easily kept steadily in view without the use of technical expressions.

As the author observes, *Faith* is in like manner understood in two senses, as the *act of believing* and the *matter believed.* The former applies the term to the *subject*, the mind, the latter to the *object*, the creed. In the same way, it may be remarked that, *Justice*, *Truth*, and other moral terms, have a subjective and an objective sense. See *Elements of Morality*, Art. I. 26.

In like manner, Science is a habit of the mind by which we know, or it is the matter which we know. As connected with this latter sense, *Conscience* would mean the *Law* written on the heart; but in the former and more proper sense, the Law is not Conscience, but is the object of Conscience.

9. Besides this distinction of knowledge as it is something in the mind which knows, and knowledge as it is an object which is known,

tincta illa quidem, sed tamen invicem ordinata, *Potentiæ, Habitus*, et *Actus; Potentiæ* scilicet, ut virtutes ipsius animæ naturales; *Habitus* ut *formæ* perficientes ipsas Potentias, et habilitantes eas ad actus suos facilius et jucundius exercendos; et *Actus* velut *exercitia* tum Potentiarum tum Habituum: *Scientiæ* nomen, itemque *Conscientiæ*, ad ista omnia aliquo modo extenditur. Sicut enim faber *secare* dicitur; *primo*, securi velut *instrumento; secundo*, acumine securis velut formali instrumenti *dispositione; tertio*, ipsa sectione velut instrumenti *usu et actione:* sic dicitur mens hominis *scire, primo*, potentia cognitiva velut *instrumento; secundo*, ipso habitu sciendi velut *dispositione* perfectiva ipsius potentiæ, *tertio*, actuali consideratione velut *usu et operatione* utriusque, potentiæ nimirum et habitus. Sumitur ergo *Scientia*
1 tripliciter, *Subjective, Formaliter*, et *Effective*. *Primo, subjective*, pro *potentia cui inest*, et quam est apta nata perficere, sicut omnis forma aliquo modo perficit suum subjectum: ut cum dicimus mysteria fidei superare *scientiam* nostram, *i. e.* excedere mensuram *potentiæ* nostræ cognitivæ.
2 *Secundo, formaliter*, (quæ est usitatissima hujus vocis significatio,) pro *habitu* cognitionis innatæ vel acquisitæ: quomodo dicimur *scire principia* per se nota, et *conclusiones* legitimo discursu ex eis deductas, et universim omnia de quibus adminiculo sensuum aut rationis habemus aliquam cer-
3 titudinem. *Tertio, effective*, pro actuali *consideratione* rei prius cognitæ: quo sensu (ut illud obiter moneam) verba

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knowledge or *scientia* in the former application is by our author distinguished as having three senses, a *power*, a *habit*, an *act;* which distinction is real, though the technical terms which he uses, (a *subjective*, a *formal*, and an *effective* sense,) no longer mark the distinction to ordinary readers. For as *memory* means either a power in the mind, a habit of the mind, or a special act of remembering which exhibits the power, and exemplifies the habit; so *knowledge* means a power, as when we say that the mysteries of faith surpass our knowledge; or a habit, as when we say that we know the axioms and propositions of geometry; or an act, as when St Paul says, "I knew not that he was the high Priest;" meaning, I had forgotten it at the moment. This distinction he illustrates by saying that the woodman may be said to cut either by means of the axe, or by means of the sharpness of the axe, or by means of the act of cutting; which illustration corresponds to the description of the habit as a *form* of the power. In the text, *Potentia cui inest et quam est apta nata perficere*, means the power of the mind in which science resides, which power is perfected, or put in its

Pauli Apostoli *Act.* xxiii. 5, in quibus explicandis mire se torquent interpretes, videntur omnino esse intelligenda *Non noveram*, inquit, *fratres, Pontificem esse maximum*, *οὐκ ᾔδειν*, *i. e.* Non *cogitavi*, non satis attente *consideravi*. Quasi dixisset, Parcite, quæso, fratres, justæ meæ indignationi, si æstuantis animi impetu abreptus, liberius aliquid elocutus fuerim quam oportuit, immemor illius et personæ, et officii mei. Agnosco *errorem:* non debui maledicere *Pontifici*, quantumvis fecerit non digna suo honore; sed impediit animi ardor, ne ista, ut par erat, attentius *cogitarem*. Sensu facillimo, et commodissimo.

X. Sed pergo. Ut *Scientia*, sic et *Conscientia* tribus eisdem modis similiter accipitur. *Primo, subjective;* pro 1
potentia intellectiva practica: ut cum dicimus legem naturalem scriptam esse in corde vel *conscientia*. *Secundo, for-* 2
maliter, pro *habitu* pertinente ad illam potentiam, eamque informante: Ut cum de homine insigniter improbo dicimus eum hominem esse *nullius conscientiæ*, abjecisse eum vel amisisse omnem *conscientiam*. *Tertio, effective;* pro actuali 3
aliquo *motu, exercitio aut operatione* illius habitus: ut cum quis dicit habere se de hoc vel illo facto *conscientiam*. Quo sensu videtur a Petro accipi, 1 *Pet.* ii. 19, *Si quis propter conscientiam Dei suffert molestias.*

XI. Porro, cum *Scientia* proprie sit *μέθοδος διανοητική*, sive *cognitio syllogistica*, adeoque omnes qui de *Conscientia* tractant naturam ejus rationemque non posse putent aptius et apertius illustrari, quam per *syllogismum practicum :* observandum est *Scientiæ* nomen hoc etiam respectu *quatuor* modis accipi. *Primo* et propriissime, pro *scientia conclu-* 1

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proper state of activity, by the habit of knowing; the maxim *omnis forma aliquo modo perficit suum subjectum*, is here applied in this sense, that the mental power is not complete without its habitual exercise.

Taylor (Chap. I. Art. 6) has the same three-fold distinction of conscience as the faculty, the habit, and the action; and employs some of the same examples of these senses.

10. In the same way Conscience, as well as Knowledge, is understood as a power, a habit, or an act: a power, as when we say that the natural law is written on our hearts or conscience; a habit, as when we say of a bad man that he has no conscience; an act, as when we say that any particular matter is a point of conscience.

11. All knowledge may be resolved into syllogisms; and knowledge may be understood in four senses, as, knowledge of the conclusion of such a syllogism; or, of the principles on which the demon-

sionis præcise: quomodo fere accipitur ab *Aristotele in Ana-*
2 *lyticis*, et alibi passim. *Secundo*, pro cognitione *Princi-*
piorum, ex quibus demonstrantur conclusiones: ut si quis dicat se *scire, Omne totum esse majus qualibet sui parte.*
3 *Tertio*, pro cognitione totius *Syllogismi:* nam qui novit præmissas et conclusionem, novit totam argumentationem.
4 *Quarto*, pro aggregata *notitia multarum conclusionum*, sive demonstrationum ad unum aliquod subjectum pertinentium: quo modo dicimur *scire Physicam, Geometriam, Medicinam, &c.* Idipsum et de *Conscientiæ* nomine dicendum; cujus discursum unico *Syllogismo practico* authores plerique comprehendunt. Sed cum sit *Conscientia*, ut dictum est, *conjuncta scientia;* ut totum illud quod sub hoc nomine venit plenius, et quasi uno intuitu perspiciatur, universum negotium (ut mihi saltem videtur) commodius expedietur, si discursum illum concipiamus velut ex *duplici syllogismo* ita constantem, ut *conclusio* prioris sit *major propositio* posterioris; in hunc modum:

Omne injustum est fugiendum.
Omne furtum est injustum. Ergo
Omne furtum est fugiendum.

Esto hic *prior syllogismus:* cujus *Prima propositio* est per se nota lumine naturæ, *Ratio* assumit minorem, *Conscientia* infert Conclusionem. Quam *conclusionem* mox arripit, ut *principium* posterioris syllogismi: et applicando eam ad aliquod particulare factum voluntatis arbitrio propositum, arguit ad hunc modum.

Omne furtum est fugiendum.
Hoc quod mihi faciendum proponitur est furtum,
Ergo *est fugiendum.*

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stration rests; or, of the whole syllogism; or, of a collection of such syllogisms, as when we say we know Geometry, Physics, and the like.

Conscience may also be resolved into pairs of syllogisms, thus, first:

Every unjust thing is to be avoided;
Every theft is an unjust thing; therefore
Every theft is to be avoided.

Second: Every theft is to be avoided;
This proposed act is a theft; therefore
This proposed act is to be avoided.

And the same may be applied to past facts.

Taylor (Chap. I. Art. 24) resolves the operation of the conscience into two practical syllogisms of the same kind as the above.

Ad quem etiam modum procedit (mutatis mutandis), quoties de *facto* particulari *præterito* judicandum est.

XII. His ita positis, dico *Conscientiam*, pariter ut *Scien-*
tiam, *quatuor* modis accipi. *Primo* et propriissime, pro 1
ultima conclusione totius discursus utriusque syllogismi; utpote
in qua continetur *ultimum judicium intellectus practici:* ut
si quis dicat, *Conscientia* mea mihi dictat hoc furtum non
esse faciendum, vel *Conscientia* mea clamat hoc furtum non
debuisse fieri. Et notitia hujus *Conclusionis* est proprie
συνείδησις, prout *συνείδησις* contradistinguitur *συντηρήσει*.
Secundo, sumitur pro notitia *primi illius principii univer-* 2
salis, lumine naturæ vel revelationis cogniti, ex quo pendet
totius discursus filum, ut siquis dicat, *Conscientia* mea dictat,
Nullum injustum esse faciendum. Et est hic usus vocabuli,
non infrequens quidem, sed tamen improprius: siquidem in
istiusmodi locutionibus, *Conscientia* nihil aliud est quam ipsa
Synteresis; quum tamen inter *Conscientiam* proprie dictam
et *Synteresin*, discrimen sit non exiguum. Habet enim se
Synteresis ad *Conscientiam* proprie dictam, sicut se habet
habitus *Intellectus* ad *Scientiam* proprie dictam: qui duo
sunt habitus mentis specifice distincti, ut ex *quinto Ethi-*
corum Aristotelis olim didicimus. Sicut ergo in *Specula-*
tivis, *Intelligentia* est habitus primorum principiorum circa
Verum et Falsum, unde deducuntur conclusiones, de quibus est
Scientia: Sic in *Practicis*, *Synteresis* est habitus primorum
principiorum circa *Bonum et Malum*, unde deducuntur con-
clusiones, de quibus est *Conscientia*. *Tertio*, sumitur *Con-* 3

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12. This being assumed, conscience, like knowledge, has four senses:

First and most properly, it is used for the conclusion at the end of the two syllogisms, this being the ultimate judgment of the practical intellect; as when a man says, My conscience forbids me to commit this theft. This, our author says, is the *Syneidesis*, as distinguished from the *Synteresis*. But see *Elem. of Morality*, Art. 263.

Secondly; Conscience is used for the knowledge of the first principles of the above reasoning; which principles we know by the light of nature; as when we say, My conscience tells me that nothing unjust is to be done. Here Conscience is the *Synteresis:* but this is an improper use of the term, for the *Synteresis* is to the *Conscience*, properly so called, as *Intuition* is to *Knowledge;* and this difference is considerable: as is shewn by Aristotle, *Nicom. Eth.* v. 6. As in matters speculative, Intuition is the habit of knowing first principles, as to true and false, whence are deduced conclusions of Science; so in mat-

scientia latius, pro toto illo *discursu* mentis practico a primo principio ad ultimam usque conclusionem, qui in duobus ejusmodi *Syllogismis*, quales jam proposui, continetur: ita ut ambitu suo et συντήρησιν et συνείδησιν proprie dictam complectatur. Facile enim suggerit sua cuique *conscientia* hæc omnia scilicet; et nihil *injustum* fieri oportere, et *Furtum* in rebus injustis merito censeri, et hoc *particulare* factum, quod a me jam admissum est, vel quod ut admittam solli-
4 citat opportunitas, *furti* crimen habere. *Quarto*, sumitur *Conscientia* pro *notitia aggregati* plurium actuum particularium, ex quibus conficitur universa vitæ et conversationis ratio. Quo sensu videntur illa Apostolorum verba intelligenda; *Viri fratres, ego omni bona conscientia* πεπολίτευμαι τῷ Θεῷ, *conversatus sum coram Deo ad hunc usque diem. Act.* xxiii. 1. *Confidimus quod bonam conscientiam habemus, in omnibus cupientes honeste conversari. Heb.* xiii. 18. Quin et 1 *Pet.* iii. 16, quod initio versus, (ut observavit vir pius et doctus,) συνείδησις ἀγαθὴ dicitur, id ipsum in fine ejusdem versus ἀγαθὴ ἀναστροφὴ appellatur. Quoties etiam quempiam laudamus aut vituperamus, ut integræ *Conscientiæ* virum aut corruptæ, ex intuitu morum et quotidianæ conversationis, sine respectu habito ad aliquod ipsius factum particulare; vox *Conscientiæ* liquido in hanc partem sumitur.

XIII. Exposui ista fateor multo prolixius, quam initio institueram; fortassis etiam quam pro vestra (Auditores) expectatione debueram. Veruntamen æquiores vos futuros confido, si constiterit hanc in explicando *Definito* prolixi-

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ters practical, the Synteresis is the habit of knowing first principles as to good and evil, whence are deduced conclusions of Conscience.

Thirdly; Conscience is taken for the whole course of reasoning, or *discourse of reason*, contained in the above pair of syllogisms: (*pro toto illo discursu mentis practico:*) including both the Syneidesis and the Synteresis.

Fourthly; Conscience is taken for the aggregate knowledge of many particular acts, as Act. xxiii. 1: "I have lived in all good conscience before God until this day:" and the other passages quoted in the text.

Taylor (Chap. I. Art. 24) in like manner distinguishes the conscience into the συντήρησις and the συνείδησις.

13. The definition above given, Art. 11, and now to be explained, applies especially to Conscience in the first or proper sense, the know-

tatem in compendium fore reliquæ tractationis, quæ in explicatione ipsius *Definitionis* per singula membra insumetur: quam nunc proxime aggredior. Unum hoc duntaxat præmoneo, quod est tamen ex ipsa re manifestum, datam a me jam ante definitionem ad *Conscientiam proprie dictam* adæquate pertinere; nimirum prout accipitur pro *notitia ultimæ conclusionis Syllogismi practici:* posse tamen cum debita aliquot vocum permutatione et ad reliquas ejus dictionis significationes explicandas adhiberi; ut in plerisque vocibus *κατ' ἀναλογίαν* æquivocis amat fieri. Fuit autem data *definitio,* quam propter tam multa interposita repetere libet, hæc; *Conscientia est facultas vel habitus intellectus practici, quo mens hominis per discursum rationis applicat lumen quod sibi inest ad particulares suos actus morales.* In qua definitione quatuor ista continentur singillatim explicanda; *Genus, Subjectum, Objectum,* et *Actus.*

XIV. *De Genere* magna est inter *Scholasticos* et acris controversia. Imprimis omnes consentiunt *Conscientiam* ad[1]

[1] *Maximi æstimare conscientiam mentis suæ.* Cic. pro Cluent. [c. LVIII.]

ledge of the ultimate conclusion of the practical syllogism: but may be modified so as to apply to the other senses of the word.

The Author's Definition or Description of Conscience contains, as we have said, twelve distinct elements, which he now proceeds to examine and establish in order. For the convenience of reference we may distinguish these elements by the first twelve letters of the alphabet, respectively.

According to Sanderson, then, Conscience is

(*A*) A Faculty, or (*B*) Habit of the (*E*) practical (*D*) Intellect, by which the mind of (*C*) man doth, (*M*) by Discourse of Reason, (*K*) apply (*L*) the Light which is in it, to (*H*) its own (*G*) particular (*I*) moral (*F*) acts.

These twelve elements are established and discussed in the following sections. *A,* in Sect. XVII; *B,* in Sect. XVIII; *C,* in Sect. XX; *D* and *E,* in Sect. XXI; *F, G, H, I,* in Sect. XXII; *K,* in Sect. XXIV; *L,* in Sect. XXV; *M,* in Sect. XXVI; also *G* is further discussed in Sect. XXVII.

In the Definition, we have to consider four things, the *Genus,* the *Subject,* the *Object,* and the *Act.* Thus if we say, Intuition is a *Habit* of the *Mind* by which it *perceives the truth* of *First Principles; Habit* is the *genus,* the *Mind* is the *subject; First Principles* are the *object; perceives the truth* of them, is the *Act.* Definitions according to this formula occur in Aristotle.

14. The general mode of defining is by *Genus* and *Differentia;* as when we define man, "a Rational Animal;" *Animal* is the Genus, and

Mentem hominis pertinere: sed utrum ut *Potentiam* ejus, an ut *Habitum*, an ut *Actum*, mira est dissensio. *Thomas*, qui in Scholis magnam familiam ducit, statuit, esse[m] *Actum.* Quam sententiam plerique amplexi sunt; non *Scholastici* tantum Scriptores, tanti viri authoritate magis (ut ego quidem arbitror) adducti, quam momentis rationum; sed et reformatarum Ecclesiarum *Theologi*, qui ex fastidio rixosæ gentis, malunt hisce in rebus receptas quasque opiniones (ab omni impietatis aut superstitionis opinione saltem liberas) sequi, quam spinosas istorum hominum subtilitates nimis anxie rimari. At mihi, ut quod censeo libere dicam, improbanda omnino videtur communissima hoc *opinio:* cui evertendæ (ne pluribus sit opus) sufficiet unicum hoc argumentum; *Conscientiæ* sc. plurimos esse actus. *Dictat* enim, *impellit, terret, testatur, accusat, excusat, solatur, remordet, torquet, &c.* *Actuum* autem nulli sunt actus; sed aut *Formarum*, aut *Potentiarum*, aut *Habituum.* Erit ergo Conscientia aut *Forma*, aut *Potentia*, aut *Habitus:* Non autem *Actus.* Ad argumentum autem *Thomistarum*, Conscientiam esse *applicationem* Scientiæ vel luminis quod est in *Synteresi*, et applicationem esse *Actum;* Respondeo, *Conscientiæ* vocem, ut ex antedictis

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[m] Aquin. I. Qu. lxxix. 13.

Rational is the Differentia by which the species *man* differs from other species of the same genus *animal.* In our Author's Definition, the *Differentia* is resolved into an *act*, and an *object* on which the Act is exercised.

Conscience, as to its Genus, is asserted to be either a Power, a Habit, or an Act of the mind of man; the Mind being thus the *subject*, in which the thing defined is found.

The assumption that Conscience, being in the mind, must be either a Power, a Habit, or an Act, is borrowed from the schoolmen. Aristotle's assumption is somewhat different. He says (*Nicom. Eth.* v. 5) "the things which are in the mind are three, Affections, Powers, Habits." The consideration of the Affections, πάθη, (including Love, Anger, Compassion, and the Mental Desires. See *Elem. of Morality*, Art. 28, &c.) is omitted by Sanderson; and hence arise some imperfections in his analysis.

Thomas Aquinas, in the *Prima Pars* of his *Summa*, gives his doctrine concerning the mind and its parts. Question LXXIX, quoted by our Author, has for its subject *De Potentiis Intellectivis.* This Question is subdivided into thirteen subordinate Questions; as, Whether the Intellect be a Power of the mind or the Essence of the mind; Whether Reason, Memory, Intellect, be the same power, or different powers; Whether the Practical Intellect and the Speculative Intellect

patet sumi quandoque *Effective*, pro aliquo actu suo, sicut et *Scientiæ* vox pro actuali consideratione, improprie tamen. Sed proprie loquendo *Applicatio* Scientiæ non est ipsa *Conscientia*, sed ejus *actus*, sicut *Consideratio* non est ipsa *Scientia*, sed ejus *actus*. Non est ergo Conscientia *Actus*.

XV. Relinquitur ergo quod aut *Potentia* sit, aut *Habitus:* nam quod non sit *Forma*, (nempe Anima ipsa, sed aliquid ejus,) apud omnes in confesso est. Neotericorum non pauci *Potentiam* esse contendunt, negant esse *Habitum*.
Quod sit *Potentia*, probant: *Primo*, quia est quædam quasi 1
Memoria; quum ad *Conscientiam* respiciat intellectus cogitans de *Agibilibus*, sicut respicit ad *Memoriam*, cogitans de *Speculabilibus;* Et Memoria est *Potentia* non *Habitus*.
Secundo, quia *Potentia* est illud per quod agens est *primo* 2
potens ad agendum: per *Conscientiam* autem homo est *potens* dictare quid sibi sit faciendum, et approbare vel improbare quod est a se factum; idque *primo*, quia posita *conscientia*

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be different powers. Of these Questions, the twelfth is, Whether the Synteresis be a special and distinct power; and the thirteenth, Whether the Conscience be a power of the mind. On this latter Question, the conclusion is, that "Conscience, properly taken, is not a power, but an act by which we apply our knowledge to the deeds which we do; this application being followed by condemnation or apprehension." Against this opinion, though held by some of the Reformers, our Author argues thus.

Conscience includes many acts: it dictates, impels, accuses, excuses, &c. If Conscience were an Act, these would be Acts of an Act. Therefore it is not an Act; it is either the Mind itself, or a Power, or a Habit of the Mind.

15. The Mind, or rather the Soul, is, according to Aristotle and the Schoolmen, the *Form* of the Body. See Arist. *de Anima*, II. 1. Ἀναγκαῖον ἄρα τὴν ψυχὴν οὐσίαν εἶναι ὡς εἶδος σώματος φυσικοῦ δυνάμει ζωὴν ἔχοντος. This phraseology is accepted by Sanderson. And he urges that Conscience is not the Soul itself, but something belonging to the Soul; the question is, whether a Power, or a Habit.

The arguments to prove Conscience a *Power* of the Soul are these:

First: it is a sort of Memory, and Memory is a Power. As the Intellect, cogitating of things to be done, looks to Conscience; so, cogitating of things to be known, it looks to Memory.

Secondly; *that* is a Power by which, as a fundamental reason, the agent is able to act, (primo potens ad agendum;) now Conscience is that by which man is able to dictate to himself what to do, and to approve or disapprove what he does; and (*primo*) *as a fundamental reason*, for having a conscience, he can do this; if conscience be removed, he cannot.

3 potest ista omnia facere, sublata non potest. *Tertio*, quia
contradistinguitur potentiæ, *Tit.* i. 15. Ubi *νοῦς* et *συνεί-
δησις*, *Mens* et *Conscientia*, aperte ponuntur ut *oppositæ spe-
cies:* proinde necesse est (ea enim lex est *contrariarum
specierum*) ut *idem* sit utriusque *genus;* *νοῦς* autem *potentia*
4 est, ergo et *συνείδησις*. Probant etiam ex abundanti, quod
Conscientia non sit *Habitus:* tum quia videtur esse tam
Naturale homini, quam voluntas et affectus; tum quia repe-
ritur in omnibus, etiam *puerulis* et *infantibus*, naturæ quodam
instinctu, qui tamen non videntur esse capaces *habituum*.

XVI. Diversam tamen sententiam tuentur *Scotus*, *Du-
randus*, et alii nonnulli e subtilioribus *Scholasticis*, quod sc.
Conscientia sit *Habitus;* et nititur sane eorum sententia rati-
1 onibus non contemnendis. *Prima*, quia *Conscientia* est *Sci-
entia* quædam: unde ei attribuuntur iidem ipsi actus, *Scire*,
Nescire, *&c.* Ut *Eccles.* vii. 22, *Scit conscientia tua:* et
Gen. xliii. 22, *Nescimus, quis reposuerit pecuniam nos-
tram in saccis nostris;* ubi vulgatus habet, *Non est in
conscientia nostra. Nihil mihi conscius sum*, inquit Paulus,
1 *Cor.* iv. 4. id est, non scio me aliqua ex parte defuisse
officio meo. Atqui *Scientia* est *Habitus;* proinde et *Con-
2 scientia*. *Altera*, quia ex recta institutione, et nova infor-
matione vel illuminatione *Conscientiæ*, homo fit *habilis* ad
aliquid agendum, ad quod non fuit ante *habilis:* sed acce-
dente ejusmodi institutione vel informatione, certum est non
ingenerari animæ novam *Potentiam*, sed novum potius *Ha-*

Thirdly; In Titus i. 15, we read, "Their mind and conscience is defiled;" now *Mind*, *νοῦς*, is a Power; therefore Conscience, *συνείδησις*, is so too.

Fourthly; Conscience is not a Habit; for it is natural, as Will and Affections are; and is found in all even children and infants, who are not capable of Habits.

Taylor (Chap. I. Art. 9), in like manner quotes Titus i. 15, for the distinction between *mind* and *conscience*.

16. The arguments to prove Conscience a *Habit* of the soul are these:

First; Conscience is a kind of Science or Knowledge, and Knowledge is a Habit, therefore Conscience is a Habit. So Eccl. vii. 22, "Thine own heart *knoweth* that thou thyself hast cursed others:" and see the other passages quoted.

Secondly; by having his Conscience instructed or enlightened, a man becomes fitted to act well, not having been so before; but by

bitum: unde sequitur Conscientiam *Habitum* potius dicendam esse quam *Potentiam.* *Tertia,* quia a meris *Potentiis* 3
nemo denominatur moraliter *bonus* aut *malus,* sed abs *Habitibus;* nec propter *eas laudatur* quis vel *vituperatur,* sed propter *hos:* at dicuntur homines *boni* aut *mali, laudanturque* et *vituperantur,* pro qualitate *Conscientiarum:* ergo Conscientia est *habitus.* *Quarta,* quod *Potentiarum* non est, 4
sed *Habituum,* acquiri, assumi, deponi, amitti: sed homines dicuntur acquirere et amittere, assumere et deponere *Conscientiam:* Conscientia igitur, non est *Potentia,* sed *Habitus.*

XVII. Statuo itaque *Conscientiam* proprie, formaliter et prædicatione recta esse *Habitum:* dici nihilominus posse eandem et *Potentiam,* idque duplici ratione. Tum *Materialiter,* quia inest *Potentiæ,* ut *Subjecto* ἐν ᾧ: tum per *approximationem;* quia est *Habitus Innatus;* et Habitus innatus, in quantum medio quodam modo se habet inter *Habitum acquisitum* et *puram Potentiam,* utriuslibet nomen induere potest, ut solent *Media* participare de utroque *Extremo.* Hinc est quod *Conscientia* reperiatur in parvulis,

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being instructed and enlightened we do not acquire a new Power, but a new Habit.

Thirdly; in virtue of his mere Power, no one can be termed morally good or evil, but in virtue of his Habits; praise and blame are given on account of Habits, not of Powers; but men are called good or bad, are praised or blamed, on account of their Conscience; therefore Conscience is a Habit.

Fourthly; Powers are not, and Habits are, acquired and lost, assumed and laid aside; but men are said to acquire or to lose, to assume or to lay aside Conscience; therefore Conscience is not a Power, but a Habit.

17. But though Conscience is most properly a Habit, it may also be called a Power, for two reasons. First, the Habit resides in a corresponding Power, and supposes such a Power; and secondly, the Habit is an Innate Habit, and Innate Habits, lying between acquired Habits and mere Powers, share of the nature of both, and may approximate to either. And because Conscience is an Innate Habit, it may be found in children and infants, which are not capable of Acquired Habits.

In answer to the argument from Tit. i. 15, it is replied that the *mind* and *conscience* need not be sharply distinguished; νοῦς may mean the *speculative Intellect* with its appurtenances; συνείδησις, the *practical Intellect* with its faculties, habits, acts, &c.

qui non sunt capaces *habituum acquisitorum.* Neque necesse est ut νοῦς et συνείδησις *Tit.* i. 15 contradistinguantur ut nudæ *Potentiæ:* imo aptius videtur sumi ibi utramque vocem *Synecdochice,* νοῦν scilicet pro *Intellectu Speculativo* cum omnibus suis pertinentiis (ut loquuntur), et συνείδησιν pro *Intellectu practico* cum omnibus suis pertinentiis; *i. e.* cum omnibus *facultatibus, habitibus, actibus,* et quæ ad eorum alterutrum pertinent *respective.*

XVIII. Apposui itaque in *Conscientiæ* definitione, et *Facultatis* vocabulum; quod mihi videbatur aliquo modo commune esse *Potentiis* et *Habitibus,* et est ad significandum *Habitus innatos* valde accommodum. Dicetis fortasse, omnem *habitum* esse crebris actibus acquisitum; adeoque hoc ita pertinere ad essentiam *habitus,* ut eo maxime, velut specifica sua differentia, dignoscendi sint *Habitus* a *Potentiis:* nimirum, quod illi *Acquisiti* sint, hæ *Naturales;* proinde, nisi quis velit secum pugnantia proloqui, et admittere meram *contradictionem in adjecto,* non debere Conscientiam dici *Habitum Innatum.* Respondeo, omnino fatendum esse omnes quoscunque *Habitus* et esse et dici debere *acquisitos,* etiam eos qui videntur esse maxime naturales; eo saltem quod sensuum adminiculo, et multis actionibus sensibilibus præviis indigeant, ad hoc ut *Species rerum sensibilium* (quarum respectu *anima* ex se est instar *tabulæ rasæ*) deferantur ad *phantasiam,* et tandem fiant *intelligibiles.* Hoc tamen non obstante, posse quosdam *Habitus* dici, idque optima ratione, *Innatos;* in quantum *ex innato* sibi *lumine* mens statim præbet *assensum* rei propositæ sine ulla formidine oppositi,

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18. Hence in the Definition of Conscience, the term *Faculty* is added, as standing, in a certain way, between Power and Habit; and well adapted to indicate Innate Habit.

It may be objected that the term *Innate Habit* is self-contradictory, since Habits are not innate, but acquired.

We answer, that all Habits do indeed require the use of the senses, in order to furnish the mind with materials to work upon; but yet some Habits may be called *Innate,* inasmuch as the mind assents to certain truths as soon as they are offered to it, in virtue of its Innate Light. Thus the Habit of assenting to the Axioms of Geometry is an Innate Habit, since they are assented to as soon as the terms are understood, without the need of study or teaching: and yet this is an Acquired Habit, inasmuch as the repeated use of the senses must precede the understanding of the terms.

supposita duntaxat *apprehensione terminorum,* nec indiget ad eliciendum ejusmodi *assensum* adminiculo aut interni *studii,* aut externæ *institutionis.* Exempli gratia, *Habitus Intellectivus* hujus Principii, *Omne totum est majus qualibet sui parte,* est *Habitus Innatus;* quatenus vi *luminis naturalis* ex sola *apprehensione terminorum* veritas ipsius ultro occurrit menti, nullo licet adhibito vel *studio,* vel *doctore.* Est tamen idem *Habitus Acquisitus,* in quantum opus est adminiculo *sensuum,* ad hoc, ut quis ex *crebris actionibus* circa res sensibiles perveniat ad *notitiam terminorum;* hoc est, ad percipiendum τὸ quid nominis *Totius et Partis.*

XIX. Si adhuc dicatur, *Conscientiam Habitum Innatum* esse non posse; quia quæ *Innata* sunt non sunt capacia *erroris,* nec possunt esse *vitiosa,* suntque *eadem in omnibus* quibus insunt: *Conscientia* autem et *errare* potest, et esse *mala,* nec est in omnibus *eadem.* Respondeo, ex his sequi quidem *Conscientiam* non esse habitum *Simpliciter Innatum,* (quod nemo sanus dixerit, repugnat enim naturæ *Habitus,* ut sit mere *naturalis et innatus;*) sed ut partim (eo quo jam dictum est sensu) *Innatum,* sic partim etiam *Acquisitum.* Nimirum sic se res habet; apportat secum anima hominis quædam quasi *semina cognitionis* boni et mali, quæ studio et institutione adolescunt et perficiuntur: sicut naturalis *agilitas* completur *exercitatione,* et naturalis *Logica artificiali.* Conscientia ergo, respectu moralium *Agibilium,* quæ sunt *de*

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19. It may be objected that Conscience cannot be an Innate Habit, because that which is Innate is not liable to errour, cannot be faulty, and is the same in all: but Conscience may err, may be bad, and is not the same in all.

We answer, this objection proves that Conscience cannot be *simply* an Innate Habit, but is partly Innate, partly Acquired.

The mind has of itself certain seeds of knowledge of good and evil, which are unfolded and perfected by thought and teaching; as the natural agility of the body is completed by exercise; as the Natural Reason by Artificial Logic. With regard to the moral convictions which appertain to the primary dictates of nature, and are its primary objects, Conscience is a Natural or Innate Habit, exists in all alike, and is always right, without errour or vice; but with regard to judgments which are learned later, and added to those self-evident principles, either by our proper meditation or by extraneous teaching, Conscience is an Acquired Habit, and may be erroneous, vicious, and various.

And thus much respecting Articles (*A*) and (*B*) of our Definition.

primo dictamine naturæ, (ut Scholastici fere loquuntur) et sunt ejus *Objecta Primaria*, est *Habitus naturalis*, sive innatus, et proinde omnibus pariter inest, et semper rectus est sine aliquo aut errore aut vitio: sed respectu eorum quæ postea *addiscuntur*, et primis illis principiis αὐτοπίστοις accedunt, sive ex propria *meditatione*, sive ex aliena *institutione*, est *Habitus Acquisitus*, et potest errore aliove defectu aut vitio laborare.

XX. Sed de *Genere* plus satis: reliqua percurram brevius. Secundum definitionis membrum est *Subjectum:* idque duplex, *Subjectum* sc. οὗ, et *Subjectum* ἐν ᾧ. *Subjectum* οὗ est *Homo;* seu potius *Creatura rationalis*, siquidem accurate loqui velimus. Nam et *Angelis* inesse *Conscientiam* defectionis suæ, et pœnarum quas eo nomine sunt daturi, indicio est, quod se [n] *sciunt* torquendos, et quod credentes revelationi divinæ [o] *contremiscunt* tamen; item quod [p] *judicandi* sunt in adventu Domini, et rationem reddituri rerum omnium a se factarum. Sed quoniam nec nostra multum interest nosse naturam mentium *Angelicarum*, et Deo sapientissimo visum est eam parcissime in Scripturis revelare: de solo *Homine* propterea definitionem institui. In brutis enim animalibus etsi appareat *Conscientiæ* quædam velut umbra, sicut et *Rationis*, cum faciant nonnulla, quæ habere videntur speciem quandam *æquitatis* et *prudentiæ*, (ut sunt sane admiranda quæ de *Elephantorum*, *Apum*, *Canum*, aliorumque quorundam animalium *Solertia* narrantur :) sunt tamen ista omnia *Phantasiæ* opera, non *Rationis;* et ab *Instinctu* naturali proficiscuntur, non a *Conscientia*. Est ergo *Homo* proprium Conscientiæ *Subjectum*, ut et *Rationis:* isque omnis

[n] Matt. viii. 29. [o] Jac. ii. 19. [p] 1 Cor. vi. 3.

20. Having spoken of the *Genus* of Conscience, we have now to speak of the *Subject* to which it belongs. Conscience is a Habit or Faculty, but a Habit or Faculty of what creature? To this, the answer plainly is, that Conscience is a Habit *of Man;* or rather, says our Author, *of a Reasonable creature;* for the Angels also have Conscience; for they fear future punishment; as the evil spirit, Matth. viii. 29, cries out, "Art thou come to torment us before the time?" And, James ii. 19, "The devils believe and tremble:" and 1 Cor. vi. 3, "They are to be judged by the saints at the coming of the Lord." But as we know, and need to know, so little of Angels, we speak, in the Definition, of Man only.

Some brutes, as elephants, bees, dogs, appear to have a glimmer-

non exclusis aut *Ethnicis*, aut *Impiis*, aut ipsis etiam *Infantibus*. De *Ethnicis* aperte pronunciat Paulus *Rom.* ii. 15. Ostendere eos opus legis scriptum in cordibus, *testimonium etiam perhibente ipsorum Conscientia.* Quin et *impurissimis* quibusque *Conscientiam* inesse, etsi impuram, testatur idem Paulus, *Tit.* i. 15. Lapsu enim amissa est *Conscientiæ rectitudo* et integritas; non *Natura.* Et cum renascimur, non infunditur de novo, quæ defuit ante, *Conscientia*, sed quæ prius inerat, fœda peccatis atque *impura*, respersa jam sanguine Christi, fide *purificatur*, ita ut placeat Deo. Etiam in *infantibus* admodum parvulis[q], *ut in lactentibus* magnificetur Dei nomen, emicat cum primis e veteris incendii ruderibus, et quamvis admodum debiliter, spargit tamen utcumque igniculos suos rationis hæc *scintillula;* prodente se præmature in iis *conscientiæ* vi, qui siquid commiserint inhonesti, latere quærunt et commissum celare.

XXI. *Subjectum ἐν ᾧ, i. e.* potentia animæ, in qua sedem suam habet *Conscientia*, est *Intellectus Practicus: Intellectus*, inquam, non *Voluntas;* isque non *Speculativus*, sed *Practicus.* Agitatur et hæc controversia inter *Scholasticos*, pertineatne Conscientia ad *Intellectum*, an ad *Voluntatem*, an ad *Utrumque.* Nolo me huic liti immiscere.

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[q] Psal. viii. 2.

ing of equity and prudence; but these appearances are the work of Fancy, not of Reason; they proceed from *Instinct*, not from *Conscience.*

Man, then, is the Subject of Conscience, and this, including Heathen, Wicked Men, and even Infants. For the Heathen, see Rom. ii. 15: for the Wicked, see Tit. i. 15. This establishes Article (*C*) of the Definition.

By the fall, Conscience lost its rightness and entireness, not its nature.

When we are born again, Conscience is not infused anew, but is purified afresh by the blood of Christ.

And in infants, in the very dawn of the faculties, it emerges from the ruins of that ancient conflagration; and though the spark be feeble, it sheds the light of reason around it, and shews itself by their trying to conceal any thing wrong which they have done. And thus, out of the mouths of babes and sucklings God has ordained strength.

21. To what part of Man's nature does Conscience belong? Our Author answers, to the *Practical Intellect;* to the Intellect, not the Will: to the Practical, not the Speculative Intellect.

Our Author quotes from Aristotle, the distinction of the Intellective Faculties into three, the Speculative Intellect, the Practical

Satis hactenus superque habuistis spinosarum subtilitatum. Paucis itaque quod instituto meo expediat, expediam. *Partis intellectivæ* tres distinctas potentias enumerat *Aristoteles libro de Anima tertio:* duas sc. cognitivas, *Intellectum Speculativum,* et *Intellectum Practicum;* et tertiam appetitivam, *Voluntatem.* Harum trium extremæ sunt *Intellectus Speculativus,* qui speculatur *Verum quatenus Verum,* et in eo acquiescit, præcise, sine aliquo ordine aut respectu ad *Opus:* et *Voluntas,* quæ præcise tendit ad *operationem,* nec omnino speculatur quicquam. Inter utramque hanc potentiam velut in medio situs est *Intellectus practicus,* qui pro more *rerum mediarum,* cum *utraque extrema* ex aliqua parte concordat, ex aliqua ab ea discrepat. *Concordat* Intellectus practicus cum *speculativo* in hoc, quod speculatur *Veritatem;* cum *Voluntate* in hoc, quod tendit in *operationem.* Quod ad *Conscientiam* attinet, illud imprimis certum est, non pertinere eam ad *Intellectum Speculativum,* quia scientiam suam omnino dirigit ad praxin. Nec proprie pertinet ad *Voluntatem:* quia si hoc esset, vel per modum *Potentiæ* ei inesset, et sic esset idem quod *Liberum Arbitrium;* vel per modum *Habitus,* et sic esset aliqua *Virtutum Moralium;* quorum neutrum a quoquam vel Theologo vel philosopho assertum unquam aut ad-

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Intellect, and the Will. The passage referred to appears to be that in *De Anima,* III. 10; where, however, this distinction is by no means so precisely stated as was afterwards done by the Schoolmen. Sanderson points the distinction sufficiently, thus:

The speculative Intellect looks at Truth merely as Truth, and rests in this contemplation merely, without regarding it as leading to Action. The Will tends to Action merely, and does not contemplate at all. The Practical Intellect lies between these two, having something common with each: it agrees with the Speculative Intellect in contemplating truth; it agrees with the Will in tending to action.

Now Conscience cannot belong to the Speculative Intellect, because it directs its knowledge altogether to action. It does not belong to the Will: for if it were a *Power* of the Will, it would be identical with Free Will; if it were a *Habit* of the Will, it would be some one of the Moral Virtues, for these are Habits of the Will. But no moralist ever asserted Conscience to be either identical with Free Will or with any of the Moral Virtues. Therefore Conscience belongs to a Practical knowing Power, that is to the Practical Intellect.

Aristotle, after placing the moral Virtues in the Appetitive Power, does afterwards assign Art and Prudence to the Knowing Power,

missum fuisse animadverti. Pertinet ergo omnino ad *potentiam cognitivam practicam,* hoc est, ad *Intellectum practicum.* Quemadmodum *Aristoteles,* postquam *virtutes morales* statuisset in *Potentia Appetitiva;* habitus tamen *Artis* et *Prudentiæ,* etsi ordinentur ad praxin, collocavit nihilominus in *Potentia Cognitiva, libro Ethicorum quinto.* Firmant hanc
sententiam et ista; quod *Conscientia* sit quædam *Scientia,* et 1
Scientia omnis est in *Intellectu:* quod capax sit *erroris,* et 2
error est morbus *Intellectus:* quod ex communi usu loquendi, 3

(*Nicom. Eth.* v. 4, 5) although they tend to practice. In like manner, though the Moral Virtues are Habits of the Appetitive Power, Conscience is a Habit of the Cognitive Power.

Our Author adds, as arguments in confirmation of this:

(1) Conscience = Con-science, is a kind of knowledge, and knowledge is in the Intellect.

(2) Conscience is capable of errour, and errour is a disease of the Intellect.

(3) He who *knows* any one's secrets is *conscious* of them.

And thus the seat of Conscience is in the Practical Intellect: Art. (*D*) and (*E*) of the Definition.

On the division, here adopted, of the Faculties of the soul into the Intellect (speculative and practical,) and the Will, we may observe, that the Will is by no means a term well suited to designate our Springs of Action different from the Intellect, which is what the author intends, or at least what his argument requires him to intend. The *Appetitive Power* of Aristotle, which is explained by him as including Desire and Anger (ἡ ἐπιθυμία καὶ ὁ θυμὸς: *De Anima,* III. 9), serves somewhat better to describe these Springs of action; yet not very well; for it does not seem suitable to class Anger under the Appetitive Part, and there are many Desires (as the desire of Money, of Honour, and the like,) which are very different from Appetites. There is not, even now, any single word which conveniently describes this part of human nature. It includes what are, in the *Elements of Morality,* termed the *Appetites* or *Bodily Desires,* the *Affections,* and the *Mental Desires.* (*Elem. Moral.* Art. 26—55).

The Will (*E. M.* Art. 61) is not rightly classed among the Springs of Action. The Will is the step between the Springs of Action and the Act. By speaking of the Will, instead of the Affections and Desires, Sanderson has been led to regard Free Will (*Liberum Arbitrium*) as a Power of the Affections or Desires, and thus to confuse his argument.

Moreover Conscience includes, not only a habit of the Practical Intellect, as Sanderson says, but also certain Sentiments; namely, a Sentiment of Approbation and Esteem for what is right, and of Disapprobation and Indignation for what is wrong (*E. M.* Art. 56).

qui *intelligit* tantum *arcana Regis*, sive ea approbet sive non, recte tamen dicitur *conscius secretorum* ejus. Ergo *Conscientiæ* propria sedes et *Subjectum* in anima humana est *Potentia cognitiva practica*, h. e. *Intellectus Practicus.*

XXII. Vidimus *Genus* et *Subjectum:* sequitur *Objec-*
tum, id sc. circa quod versatur *Conscientia.* Et hi sunt *Actus*
1 *morales particulares proprii.* Dico *primo, Actus; i. e.* ali-
quod ab homine operabile qua homo est, sive creatura ra-
tionalis: sive id spectetur ut *futurum* et ab ipso *faciendum,*
sive ut *præteritum* et jam *factum,* sive ut *præsens* et in ipso
fieri. *Conscientia* undique oculata est, omnia rimatur. *Pro-*
spicit futura; si quid turpe facturus es, *monet* ne facias:
aspicit præsentia; et in ipso peccandi actu *obmurmurat,*
vellit, mordet, pungit, tundit, ut desistas porro: *respicit*
præterita; et ubi peccaveris, *arguit, objicit, accusat, damnat,*
torquet. Contra, ut bene facias, *hortatur:* dum facis, *mul-*
cet, excitat, erigit: ubi feceris, *laudat, defendit,* gaudio et
2 pace *perfundit* pectus. Dico *secundo, Actus Particulares.*
Non limitando *Subjectum*, quasi essent aliqui *actus non par-*
ticulares; sed opposite ad *scientiam* illam quam *Conscientia*
supponit et applicat; quæ *scientia,* cum sit universalis, *appli-*
3 *catur* tamen ad actus particulares. Dico *tertio, Actus par-*
ticulares Proprii: ut hinc excludatur illa *Conscientiæ* signi-
ficatio, qua latius accepta, et ad alienas actiones extenditur;
ut cum dicitur *Conscius arcanorum Regis, Conscius conju-*
rationis Catilinæ, et similia; quæ non sunt nostri instituti,
qui de *Conscientia proprie dicta* loquimur, quæ est circa
4 *agibilia,* quatenus *a se facta* vel facienda. Dico *quarto,*
Actus Morales. Ubi observandum quædam evenire *ex Neces-*
sitate, quædam *Contingenter.* *Ex Necessitate;* ut ortum et oc-

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22. Having seen what is the Genus and what the Subject of Conscience, we have now to consider its *Object;*—that about which it is employed. This is, (*H*) *our own* (*G*) *particular* (*I*) *moral* (*F*) *acts.*

First; (*F*) *Acts:* both future, past and present. See the text.

Secondly; (*G*) *Particular Acts:* in distinction from the general knowledge of right and wrong, Conscience is this knowledge applied to particular acts. See Art. XXVII.

Thirdly; (*H*) *Our own particular Acts:* in distinction to consciousness of or privity to the acts of others. See the text.

Fourthly; (*I*) *Moral Acts.* For all acts are not moral: some are *necessary,* as the motions of sun and moon: of these we may have Knowledge or Science, but not Conscience: for they do not at all

casum solis, eclipsin Lunæ, &c. De quibus est quidem *Scientia*, ob eorum certitudinem: ceterum non omnino pertinent aut ad *Conscientiam*, aut ad *Liberum Arbitrium*. Quæ *contingenter* eveniunt, ea aut sunt *τῶν ἐφ' ἡμῖν*, *i. e. in nostra potestate*, aut *non sunt*. Quæ *non sunt in nostra potestate*, ut avium volatus, coorta subito tempestas, &c. nec sub *scientiam* cadunt propter *incertitudinem;* nec, quia *extra potestatem nostram* posita sunt, ad curam nostram pertinent, ut de eis quicquam aut *Conscientia* statuat, aut *Arbitrium* eligat. Rursus *τῶν ἐφ' ἡμῖν*, eorum *quæ in nostra potestate sunt*, quædam sunt moraliter *neutra* et *ἀδιάφορα*, hoc est, quæ neque de genere suo, neque ratione alicujus permanentis circumstantiæ continent in se aliquam *bonitatem* aut *malitiam moralem*, ut Ire in forum, Scribere epistolam, &c. Et ista quidem pertinere possunt ad *liberum Arbitrium*, si saltem digna sint de quibus deliberetur, quia cadere possunt sub *electione:* sed non pertinent per se ad *Conscientiam*. *Dico per se:* quia fieri potest *per accidens*, ratione *scandali* aut alterius alicujus *circumstantiæ*, ut de his etiam cognoscat *Conscientia*. Alia vero sunt *moraliter bona vel mala:* ut Deum colere, parentes honorare, depositum reddere, pauperem opprimere, aliena rapere, fidem fallere vel servare, et cetera omnia quæ *Philosophi* *ἐπαινετὰ* vel *ψεκτὰ*, laude aut vituperio digna, *Scholastici* meritoria et demeritoria solent appellare. Et circa hæc proprie versatur *Conscientia*.

XXIII. *Objectum* ergo Conscientiæ humanæ est *Opera-*

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pertain to our Will. Others are *contingent:* and of contingent things, some are not in our power, as a tempest; of these, since they are both uncertain, and independent of our Will, we have neither Science nor Conscience. Of the things which are in our power, some are morally neutral and indifferent, having in them, as to their natures, nothing of moral good or evil; as, to go to the market-place, to write a letter. These are matters of Free Will, but not, of their own nature, matters of Conscience. I say, *of their own nature*, for, in virtue of some accessory circumstance, as the occasioning scandal, or the like, they may become matters of Conscience. Other acts are of their own nature good or evil; as to worship God, to honour our parents, to return what is entrusted to us; to keep faith or to break faith; to oppress the poor; all in short that is matter of praise or blame; meritorious or demeritorious, as the schoolmen speak; and about this last class properly is Conscience employed.

23. The Object of Conscience, then, is moral action, done or to be done; omitted or to be omitted. But it is to be remarked that for

bile Morale; factum vel faciendum, omissum vel omittendum. Advertendum tamen est, *hominibus Christianis* qua talibus, *objectum Conscientiæ* aliquanto ulterius extendi: ut non solum obligetur in conscientia ad *agenda* quæ sui sunt officii, quatenus *homo* est; sed et ad *credenda mysteria Fidei* in Verbo Dei revelata, quatenus *homo Christianus* est. Nam et *Infidelitas* impuram reddit conscientiam, *Tit.* i. 15, quam *purificat* et emendat fides, *Act.* xv. 9. Et remordet *Conscientia* tam eum, qui contemnit quæ in *Baptismo* vovit se *crediturum;* quam eum qui mandata Dei violat, quæ promisit se *servaturum.* Etsi fortassis haud incommode dici posset, *Fidem* etiam ipsam Evangelicam inter *operabilia Moralia* censendam esse. Ita enim ipse Servator Christus disertissimis verbis: *Hoc est opus Dei, ut credatis in Filium,* &c. *Joh.* vi. 29. Et Johannes Apostolus similiter: *Hoc est mandatum ejus, ut credamus in nomine Filii sui Jesu Christi, et diligamus invicem, sicut ipse mandavit nobis,* 1 *Joh.* iii. 23.

XXIV. Restat ultimum *definitionis* membrum; proprius sc. *Conscientiæ Actus: Applicatio* nempe Luminis quod est in mente per discursum rationis ad actus particulares. Dico *primo,* Actum Conscientiæ proprium et primarium esse *applicationem.* Tritum est in Scholis Axioma, *Unius habitus unicum tantum esse actum;* primarium sc. et palmarium, et ad quem reliqui omnes *actus* eo pertinentes reduci possunt. Ut

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Christians, the office of Conscience extends to Belief as well as to Action. We are bound, as Christians, not only to do good works, but to believe the mysteries of faith revealed in the word of God. Tit. i. 15: "Unto the unbelieving nothing is pure:" unbelief defiles the conscience. And faith purifies it: Acts xv. 9: "God . . . purifying their hearts by faith." Conscience condemns him who despises what in his baptism he promised to believe, as well as him who violates God's commands which he promised to obey. Perhaps we may reckon Faith among moral actions: Christ says plainly, Joh. vi. 29: "This is the work of God, that ye believe on him whom he hath sent:" and similarly St John: 1 Joh. iii. 23.

24. We come to the last member of the Definition, the Application of the Light which is in the mind, by discourse of reason, to particular acts. And our author asserts, First; that the proper and characteristic act of Conscience is (*K*) an *Application:* it is the application of the General Rule and the Particular Fact, the one to the other. See Art. VI.

The Schoolmen say that each Habit has one primary and characteristic Act. We have seen that there are many Specific Acts of Con-

ex antedictis satis constat, multi sunt *Actus Conscientiæ* in specie : sed quisnam sit ille *actus communissimus,* qui reliquos omnes infra ambitum suum complectatur, id potissimum inquirendum est ; quia non debet ingredi definitionem *Habitus,* nisi unicus ille *primarius Actus,* qui est *Habitui* adæquatus, et ad quem ceteri ejus *Actus* universi reducantur. Hunc nonnulli, cum viderent plerosque illorum *actuum,* quos exercet *Conscientia,* ad actum *judicandi* aliquo modo referri posse, (*judicat* enim *Conscientia* de factis præsentibus, præteritis et futuris) censuerunt esse *Actum Judicandi.* Sed enim sunt aliqui *Conscientiæ Actus,* qui non nisi dure admodum et coacte eo referri posse videntur ; ut exempli gratia, actus ille quo *Conscientia* rei factæ vel omissæ *testimonium* præstat : non est enim, aut *Judicis* de facto *testari,* aut *Testis* de crimine *judicare.* Quid quod iste *judicandi* actus *applicandi* actum necessario supponit, ut se anteriorem : *applicet* enim prius necesse est *Conscientia factum,* de quo judicatum sit, *lumini* mentis, quam possit de ipso *judicium* facere. Et est *applicandi actus* ei quam jam diximus vocis notationi valde consentaneus, *Conscientiam* sc. ideo dictam, quod sit scientiæ ad scientiam *applicatio.*

XXV. Dico *secundo ;* Hanc applicationem esse *Luminis quod est in mente ;* hoc est, *Luminis,* pro eo tempore quo
fit applicatio, *menti præsentis.* Sive sit illud *Lumen Naturæ ;* 1
communes sc. *Notiones* et ipsius Naturæ dictamine cordibus humanis inscriptæ, et in *Synteresi* conservatæ, velut *titio ereptus* e communi incendio, et *reliquiæ imaginis Dei* post
lapsum : sive *Lumen divinæ revelationis,* extraordinariæ, per 2

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science, but we have to examine what they have in common : for this is the Act which should enter the Definition.

Some have held that the characteristic Act of Conscience is to *judge:* for Conscience judges of Acts past, present and future. But there are some Acts of Conscience which cannot easily be referred to judging; as for instance the act of bearing witness; for the Judge does not bear witness; nor does the Witness pronounce judgment. And in truth, the act of judging presupposes the act of applying: for Conscience must apply the fact to the light of the mind in order to judge. And thus, as already said, Conscience is the Application of our knowledge. This establishes (*K*) in our Definition.

25. In the second place, this application applies (*L*) *the Light which is in the mind:* that is the Light which is present to the mind at the time when the application is made. Whether it be

The Light of Nature: the common notions inscribed on our hearts

visiones, somnia, prophetias, &c., vel ordinariæ, quicquid sc. Deus humano generi patefecit in libris Sacris *Veteris et Novi*
3 *Testamenti:* sive denique *Lumen Rationis;* quicquid nimirum ex utriusque generis principiis, lege sc. *Naturæ,* et *revelatione divina,* sic immediate et evidenter deducitur, ut nemini fas sit, qui illa saltem concesserit, de his dubitare.

XXVI. Dico *tertio,* applicari hoc lumen *per discursum rationis. Lumen* enim illud *quod applicandum est,* cum sit *Universale quid,* et id *ad quod applicandum est, Actus particulares* sive singulares; non potest fieri talis *applicatio,* nisi ejusmodi mediante *discursu,* qui universalia singularibus connectere valeat. Et hoc est *opus rationis,* per ejusmodi *syllogismum* aut *syllogismos practicos,* quales jam ante exhibuimus. Porro, quia (ut dici solet, et docet id ipsum experientia) [r] *descendendo* fere *contingit errare:* facillime potest in hoc *discursu* irrepere alicubi *Error.* Unde fit, ut licet non facile erretur circa [s] prima et *Universalia principia,* quæ majorem habent evidentiam; in illis tamen *principiis applicandis,* et deducendis inde *conclusionibus* sæpissime erretur. Quo majore opus est attentione et cautela, (ne ipsi nosmet decipiamus,) ut in hoc discursu omnia diligentissime expendantur, ut legitime procedatur, ut debite concludatur.

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[r] *οἱ τὸ καθόλου θεωροῦντες, πολλάκις ἔνια τῶν καθ' ἕκαστον οὐκ ἴσασι δι' ἀνεπισκεψίαν.* Arist. I. Anal. Poster. XIII.

[s] *τίς ἂν θύρας ἁμάρτοι;* Arist. Metaph. A ΕΛΑΤΤΟΝ. c. 1.

as the dictates of nature: preserved in the Synteresis: a brand saved from the burning of the fall: the remains of the image of God:

The Light of Revelation: Extraordinary, as visions, prophecies, &c. Or *Ordinary,* contained in the Scriptures.

The Light of Reason: whatever may be evidently deduced from the other two, the Law of Nature, and Revelation. See *Prælect.* IV.

26. In the third place; this light is applied *(M) by Discourse of Reason.* For the Light which is to be applied is a Universal thing, and that to which it is to be applied is Particular Acts, and hence such Discourse of Reason is requisite as we employ to connect Universals with Particulars. And this is a work of Reason, performed by means of such practical Syllogisms as we have already exhibited. See Art. XI.

But errour is most easily committed in descending from universals to particulars. And thus, though we do not readily err as to first and universal principles, which are evident, we often err in applying these principles, and deducing conclusions from them. And hence much caution is necessary in this process.

Our Author, in his twelfth Sermon *ad Aulam,* Art. 17, quotes from Aristotle the maxim here referred to, *descendendo contingit errare.*

XXVII. Dico *quarto*, Applicationem hanc fieri oportere *ad actus particulares.* Id quod *tribus* omnino *modis* fieri contingit. Applicat enim Conscientia Lumen mentis quod sibi adest, vel ad *facta*, vel ad *facienda.* Ad facta, dupliciter: *Primo,* 1
ferendo *testimonium* hoc a nobis *factum* esse vel *non factum* esse: quales sunt istæ Rhetorum formulæ, in *quæstione Facti, Occidistine matrem, Orestes?* Conscientia respondet, *Occidi.*
Secundo, ferendo *judicium*, quod factum est vel omissum, *bene* 2
sit an *male factum*, rectene sit an perperam *omissum;* ut in *quæstione Juris* apud Rhetores, ubi de facto constat. *Occidistine Clodium Milo? Occidi.* Fateris ergo te sontem? *Jure occidi.* In *prima applicatione* procedit Conscientia per modum *Testis:* in *secunda*, per modum *Judicis.* Officia autem et *actus* ejus sunt, *in primo processu* testimonium perhibere: *in secundo processu* arguere, accusare, excusare, defendere, condemnare, absolvere. Unde oriuntur porro in anima varii effectus: a *redarguente, accusante, condemnante Conscientia* summa animi *tristitia* et inquietudo, remorsus, terrores, tormenta; e contra ab *excusante, defendente et absolvente*, summa animi *pax* et tranquillitas, *gaudium* et solatium ineffabile, *spes* arrecta, *fiducia* intrepida, et inconcussa mentis *constantia.*
Tertia Conscientiæ applicatio respicit *futura* facienda; in 3
qua procedit *Conscientia* per modum *Legislatoris, Præcep-*

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27. In the fourth place, this application must be made (*G*) *to particular Acts.* And this, in three ways:

First, to what is done, as testimony. This is a question of Fact. "Orestes, did you slay your mother?" Conscience answers, "I slew her."

Second, to what is done, as right or wrong. This is a question of Right. "Milo, did you slay Clodius?" "I slew him." Do you then confess yourself guilty? "I slew him rightfully."

Thus, in the first process, Conscience bears Witness, in the second, it accuses, excuses, defends, convicts, condemns, absolves. And hence arise various effects in the mind; Conscience accusing, convicting, condemning, produces grief and trouble, remorse, terrour, torment; excusing, defending, absolving, it produces peace and tranquillity, joy and consolation, hope, confidence and constancy.

Third, the application of Conscience regards future acts, still to be done: in these cases Conscience proceeds in the manner of Legislator, Preceptor, Monitor, Counseller. In this process, its acts are to dictate, oblige, instigate, withhold.

These are the principal Acts of Conscience; and he who listens to hear when she counsels rightly will not have to fear her either as Witness or as Judge.

toris, *Monitoris*, aut *Consiliarii.* Et in isto processu, ejus *actus* et officia sunt dictare, obligare, instigare, retrahere. Hi sunt præcipui *Conscientiæ Actus:* cujus vocem recta *monentis* qui audierit, nec *Testem* ipsam multum reformidabit, nec *Judicem.*

XXVIII. Absolvi tandem, quæ de *Conscientiæ Natura* videbantur mihi dictu necessaria. Prolixius vereor, certe obscurius, quam aut voluissem, aut debuissem, si res aliter tulisset; aut quam facturum me spero, in futuris (si Deus voluerit) de *Conscientiæ usu* Prælectionibus. Sed profecto intricata est et perplexa omnis (quod viri gravissimi jam olim conquesti sunt,) de *animæ intellectivæ potentiis* et facultatibus disquisitio: tum quia res ipsæ sunt a *materia* et *motu sensibili* paulo remotiores, et *notiora* sunt nobis quæ *sensui* (unde plurima nostra cognitio oritur) *propinquiora;* tum etiam ob mutuam inter se *connexionem cognationemque.* At rem manifestam, et vulgo notam, quæ est in quotidiano usu et in omnium ore, cujusque vim et motus nemo est qui non sentiat, *definiendo* non tam *illustrasti*, inquietis, quam *obscurasti.* Equidem *nihil hinc diffindere possum:* nimirum, sic sunt inanes nostræ hominum cogitationes omnes, et universi conatus. Quæ sunt ante pedes et oculos, quæ in sensus et animos incurrunt, quæ sunt lippis et tonsoribus haud ignota, quæ capere se putant, et quidem suo modo capiunt *illiteratissimi* quique homunciones; hæc ipsa non capiunt [t]*acutissimi Philosophi;* in his vel subtilissimis ingeniis *aqua hæret. Tempus, Locus, Motus,* id genus plurima, quid sibi velint, et quid sint, quotusquisque est hominum rusticorum, qui non existimet se perfectissime intelligere? In quorum natura indaganda, eruenda, explicanda, Doctores *profundi, subtiles, Angelici,*

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[t] *Odi ego, inquit, definire—facilius est mihi videre in alterius definitione quid non probem, quam quicquam bene definiendo explicare.* Augustin. de Ordine, II. cap. 2.

28. So much concerning the Nature of Conscience: we have next to speak of the Use of Conscience.

The present Lecture deals with the most difficult part of the subject. All disquisition concerning the powers and faculties of the intellective soul is intricate and perplexed; both because the things treated of are remote from sense and matter, and also because they are so connected and related with each other.

Definition in abstract subjects is always difficult. See the authorities in the Text.

Seraphici, per multa retro sæcula velut in palæstra se exercuerunt, exercentque etiamnum, nec potuerunt hactenus post tantum sudoris et pulveris optatam metam contingere. In *tempore sum, et de tempore loquor, et tamen nescio quid sit tempus*, inquit Augustinus initio libri *de Tempore.* Qua in re nequeo satis admirari Dei Opt. Max. infinitam sapientiam, retundentis hoc pacto humanam superbiam, et repræsentantis mortalibus velut in speculo inanem illam *δοκησισοφίαν*, qua sibi *videntur aliquid esse, cum nihil sint*[u], misere decipientes cor suum. Ut scilicet discant homunciones [x]*metiri se modulo ac pede suo*, nec [y]*sapere ultra quam par est, sed sapere ad sobrietatem* agnoscentes insipientiam suam, ut Deo integra constet sapientiæ suæ gloria.

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[u] Gal. vi. 3. [x] Horat. I. Epist. VII. [98]. [y] Rom. xii. 3.

PRÆLECTIO SECUNDA.

IN QUA OSTENDITUR, NON ESSE IN *BONÆ INTENTIONIS* CONSCIENTIA SATIS PRÆSIDII, UT IN EA POSSIT ALIQUIS TUTO ACQUIESCERE.

ROM. III. 8.

Et non sicut blasphemamur, et sicut quidam aiunt nos dicere, Faciamus mala, ut eveniant bona: quorum damnatio justa est.

I. MENTEM humanam aliquid in se *divini* continere magno consensu fassi sunt veterum Sapientes: qui eam [a]*divinæ particulam auræ*, [b]Θεοῦ ἀποσπασμάτιον καὶ ἀπαύγασμα, [c]*decerptosque ab Diis immortalibus animos nostros et quasi delibatos*, dixerunt. Quin et altius ipsorum nonnulli assurgentes, et audacius prolocuti, *Mentem Deum* ipsum dicere, eique velut Deo [d]*templa* erigere, non sunt veriti. [e]Ὁ νοῦς γὰρ ἡμῶν ὁ Θεὸς, inquit apud *Plutarchum Menander: et Ovidius,* [f]*Mens quoque numen habet:* et *Seneca,* [g]*Quid aliud voces animum, quam Deum in humano corpore hospitantem?* Quorum ut illi, animæ magis

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[a] Horat. ii. Sat. ii. [v. 79.]

[b] Epictet. [Dissertat. I. xiv. 6: 8. 11.]

[[c] Cic. Tusc. Disp. v. 13: de Senect. xxi. 78: de Divin. i. 49, 110.]

[d] *Menti ædes in Capitolio.* Vid. Cic. de N. D. ii. [23: iii. 18]: et Liv. Lib. [xxii. 9, 10]: xxiii. [31].

[e] Plutarch. in Quæst. Platon. [p. 999 E.]

[f] Ovid. Fast. [vi. 241.]

[g] Epist. xxxi. Ψυχὴ ἑκάστου δαίμων: Xenocrat. apud Aristot. Top. Lib. II. c. 6.

1. The object of this Second Lecture is to shew that good Intentions do not necessarily make good Actions.

The power or authority of Conscience is implied in the expressions used by ancient authors concerning the divine nature of the human mind. See the text.

Jeremy Taylor, in his *Ductor Dubitantium*, or "Rule of Conscience," (Chap. 1) has borrowed several of the quotations and illustrations which Sanderson here uses. He says:

"It was well said of St Bernard, 'Conscientia candor est lucis æternæ, et speculum sine macula Dei majestatis, et imago bonitatis illius:' 'Conscience is the brightness and splendor of the eternal light, a spotless mirror of the Divine Majesty, and the image of the goodness

οὐσίαν et *substantiam,* (quæ cum sit expers materiæ et molis, immunis a corruptione et morte, intelligentiaque et arbitrii libertate prædita, ad Deorum immortalium propius quam corporearum rerum naturam visa est accedere:) sic isti, ejusdem vim illam et *δύναμιν ἐνεργητικὴν,* quam [h] *Conscientiam* dicimus, spectasse potissimum videntur. Hinc illud ejusdem *Menandri,* Βροτοῖς ἅπασιν ἡ συνείδησις Θεός; *Mortalibus sua cuique Conscientia Deus est.* Quo nimirum sensu dixit Dominus, se *constituisse Mosen* [i] *Deum Pharaoni;* quod sc. is Pharaoni voluntatem Dei subinde *inculcaret,* ad eam faciendam Pharaonem *instigaret,* non obsequentem continentibus plagis *insectaretur:* eodem fere sensu dici poterit, eundem quoque *constituisse in Deum unicuique hominum* singularium propriam *Conscientiam.* Quæ sc. ipsius vice, velut *præco legis æternæ,* quæ essent ipsi facienda fugiendave *dictaret;* ad ea quæ oportet præstanda sedulo *impelleret;* recte aut secus factorum rationem *exposceret; extorqueret* a sceleratissimis quibusque justitiæ divinæ agnitionem; præmia singulis pœnasque, prout commeriti fuerint, ut *judex* æquissimus et *decerneret* et *tribueret.* Is enim est status naturalis *Conscientiæ,* ut medio quodam inter utrumque loco sit posita; infra *Deum* quidem, at supra *hominem: Deo* subdita, ut *Ministra; homini* præposita, ut *Domina.*

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[h] *Meminerit, Deum se adhibere testem, id est, ut arbitror, mentem suam.* Cicer. de Offic. iii. [10.]

[i] Exod. vii. 1.

of God.' It is higher which Tatianus said of Conscience, Μόνον εἶναι συνείδησιν Θεὸν, 'Conscience is God unto us;' which saying he had from Menander,

Βροτοῖς ἅπασιν ἡ συνείδησις Θεός,

God is in our hearts by his laws: he rules in us by his substitute our Conscience. God sits there and gives us laws; and as God said unto Moses, 'I have made thee a God to Pharaoh,' that is, to give him laws, and to minister in the execution of those laws, and to inflict angry sentences upon him, so hath God done to us." Taylor adds other quotations.

Taylor also discusses the question how far Conscience resides in the Understanding, the Memory, and the Will, respectively: but, it appears to me, less lucidly than Sanderson.

Taylor gives the same view of Conscience with which Sanderson sums up this chapter; that Conscience is placed in a middle position between God and man; below God, as his Minister; above man, as his Mistress.

II. Unde exurgit *Conscientiæ duplex respectus;* perinde ut in aliis rebus omnibus contingit, quæ sunt in aliquo ordine dispositæ *secundum Sub et Supra:* in quibus quæ *medium* occupant locum, geminum habent respectum; alterum ad *Superiora* quibus subsunt, ad *Inferiora,* quæ sub ipsis posita sunt, alterum. Ut *Centurio* et Tribuno *paret,* et gregario militi *imperat:* (*Ego sum homo sub potestate constitutus, habens sub me milites, Matth.* viii. 9.) Et in *serie prædicamentali,* quæ inter *genus summum* et *speciem infimam* interjecta sunt, sunt eadem et *genera specierum,* de quibus prædicantur, et *species generum* quibus subjiciuntur. Recipit utique et *Conscientia,* prout ad diversa refertur, diversam conditionem. Habet enim rationem et *Regulati* et *Regulantis:* respectu *Dei* et divinæ legis, rationem *Regulati;* respectu *Hominis* et humanarum actionum, rationem *Regulantis.* Cum itaque nobis propositum sit, *Conscientiæ,* (quam nuperrime definivimus,) *usum,* præsertim quod ad res agendas attinet, estque ad vitæ morumque institutionem accommodum, explicare; instituti nostri ratio postulat, ut de *utraque Conscientiæ obligatione,* quæ nobis usui esse poterunt, dicamus: *Passiva* scilicet illa, qua obligatur conformare se *Voluntati divinæ,* cui ut *Normæ* subest; et *Activa,* qua obligat ad sui conformitatem omnes *actus humanos,* quibus ut *Norma* præest. Sunt ergo institutæ tractationis *partes duæ:* prior, de *Conscientiæ Subjectione,* sive *Obligatione passiva;* posterior, *de Conscientiæ Potestate,* sive *Obligatione activa.*

III. De quarum priore ut legitima instituatur disputatio, illud imprimis præmittendum est, cum *Rectitudo* cujusque rei consistat in conformitate sua ad *regulam suam proximam* et

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2. Hence Conscience has a double aspect, to that which is above and that which is below it; as a Centurion obeys a Tribune, and commands a Private Soldier (Matt. viii. 9). In the *predicamental series,* that is, in the gradation of generality between the highest genus and the lowest species, Conscience stands between the Divine Will and Human Action. It is regulated by the former and regulates the latter.

Hence we must consider these two points; the Subjection of Conscience, that is, its Passive Obligation; and the Power of Conscience, that is, its Active Obligation.

3. The Rectitude of anything consists in its conformity to its proximate and immediate Rule, and through this, to its supreme and first Rule. Now the immediate Rule or Law of Conscience is Right

immediatam, atque ita deinceps usque ad summam et *primam Regulam;* cumque immediata *Conscientiæ* regula sive lex sit *recta Ratio,* legi tamen superiori quam Deus ei præstituit subdita: *Conscientiam* tum demum dici *Rectam,* cum conformis est *rectæ rationi* juxta eam legem quam Deus supremus Legislator ei præstituit, pro conditione illius *actus* sive *operis,* quodcunque tandem illud fuerit, circa quod pro tempore versatur. Ultima proinde resolutio *Conscientiæ* est in *legem* aliquam rationali creaturæ a Deo impositam: ut qui solus est *Conscientiæ Dominus* et supremus Legislator; qui eam homini indidit; qui ejus solus cognitor est et judex; qui solus potestatem habet animam, prout legem ipsius servaverit aut violaverit, servandi et perdendi, juxta illud *Jac.* iv. 12, *Unus est Legislator, qui potest servare et perdere.* Id quod apud omnes, quotquot uspiam sunt hominum, adeo in confesso est, ut non facile reperiatur, qui id ipsum *in thesi* non ultro largiatur esse verissimum. Ast *in hypothesi,* ubi quid agendum est, nescio qua cordis humani pravitate fieri solet, ut plerique mortalium, (etiam eorum, qui nec sibi videntur, nec aliis, omnem prorsus conscientiæ curam abjecisse,) tam pronis affectibus ad ea ferantur quæ facta cupiunt, ut ea non ad unicam illam *supremam regulam* fideliter exigenda adducant, (quæ tamen sola potest securam præstare conscientiam;) sed satis esse ducant ad *Conscientiæ* suæ securitatem, si aut *bonæ intentionis* prætextu, aut *sancti viri exemplo,* aut alicujus magni nominis *Theologi auctoritate* se factaque sua quoquo modo tueri potuerint. Quæ *cordis humani deceptio,* quum et omnibus seculis nimium invaluerit, et novissimis hisce temporibus vel maxime; rem utilissimam me facturum judicavi, et his quibus

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Reason; this being required to be conformed to the higher Rule, the Will of God. Hence a right Conscience is that which is conformed to Right Reason, so as to agree with the Law which God, the supreme Legislator, has appointed, according to the condition of the particular act contemplated. Thus Conscience is ultimately resolved into a law imposed on the rational creature by God, the supreme and only Legislator and Judge: see St James iv. 12.

Men allow this *in thesi,* as a general doctrine; but *in hypothesi,* when they have to deal with particular cases, they often do not refer to this sole and Supreme Rule, but are satisfied to defend their actions on the ground either of *Good Intention,* or of the *Example of Holy Men,* or of the *Authority of Divines.*

These three grounds of defence are to be examined.

nunc vivitur moribus pernecessariam, si *tres* istas vulgatissimas *προφάσεις*, a quibus tot *conscientiis* periculosissime illuditur, de medio sublatum irem. Est ergo ante ostendendum, quam ad indagandam veram et propriam *Conscientiæ regulam* descendatur, non esse in re aliqua facienda ad *Conscientiæ* securitatem satis præsidii, si id quod fit aut *bona intentione* fiat, aut viri alicujus nitatur vel *pii exemplo*, vel *docti judicio*. De reliquis duabus (si Deus concesserit) posthac videbitur: de ea quæ primo loco occurrit, *Bona* sc. *Intentione*, nunc agendum.

IV. Ubi pono hanc conclusionem. *Ad bonitatem actus non sufficit bonitas intentionis.* Hoc est, *Intentio bona* non potest sola et per se efficere, ut *Actus* aliquis humanus sit *moraliter bonus:* vel quod idem est, et sunt ipsissima Apostoli verba: *Non sunt facienda mala, ut eveniant bona.* Actum cum dico, intelligo tum *interiorem Actum* qui est *in Voluntate,* tum *exteriores* omnes inde profluentes, qui sunt in *facultatibus executivis:* ut sit sensus, ex sola *bona intentione* non sequi, aut *voluntatem* ipsam, quæ est primum principium agendi, aut *opus* aliquod *externum* inde dimanans, dicenda esse *bona.* *Intentio* autem cum dupliciter sumatur, primo *Proprie et Formaliter* pro *Actu intendendi,* i. e. pro motu voluntatis tendentis in finem per aliqua media; secundo *Materialiter et Objective,* pro *re ipsa intenta,* i. e. pro fine in quem sic tendit voluntas: utramque intelligo in Conclusione. *Actus* enim intendendi, et *finis* intentus, pariter se habent ad bonitatem et malitiam *Actus;* saltem quod ad *qualitatem ipsius actus* pertinet: nam *quantitatem* bonitatis aut malitiæ si spectemus, non est per omnia eadem utriusque ratio. Posito enim quod aliquis *Actus* sit de specie sua et ratione Objecti

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4. The doctrine which we have here to establish is, that good Intention cannot, alone and of itself, make an Act to be morally good.

This is the same as the Apostle's doctrine, Rom. iii. 8: that we are not to do evil that good may come.

By the Act, we mean, both the internal Act of the Will, and the external Acts by which it is carried into effect. And our proposition is, that the goodness of the Intention does not suffice for the goodness either of the Will or of the external Acts.

Intention is taken in two senses; the Act of intending, and the Thing intended. These two have the same bearing upon the goodness or badness of an act; at least as far as regards its *quality* as good or bad, though not exactly as to the *quantity* of goodness or badness.

Thus if the act be good and done for a good end, or if it be bad

bonus, et quod fiat etiam *in bonum finem;* vel e contra, posito quod sit *malus*, et fiat etiam in *malum finem:* quanto fortius movetur voluntas dum ad illum finem tendit, tanto erit ille *Actus* respective, vel melior vel deterior. Ut si quis *Sacræ cœnæ* participaret, *eo fine* ut mortis Christi recordaretur; quo fortius *mortis Christi* memoriam intenderet, eo melius actum illum Eucharisticum præstaret: et siquis proximo *calumniam* faceret, intendens ipsius perniciem; quo fortius hanc intenderet, eo *pejor* esset calumniandi Actus. Correspondet ergo et commensuratur *quantitas boni vel mali Actus quantitati bonæ vel malæ Intentionis;* si attendatur *Intentio* quantum ad *actum intendendi:* non autem si attendatur quantum ad *rem intentam.* Neutro tamen modo sumpta *Intentio* sufficit ad hoc, ut actus aliquis, aliunde *malus*, fiat *bonus.*

V. Probatur autem hæc *Conclusio* multis et firmissimis argumentis. *Primo* ex verbis sacri textus, *Rom.* iii, in quibus Apostolus non sine aliqua indignationis specie rejicit iniquam illam calumniam, qua docuisse dicebatur *facienda esse mala, ut eveniant bona.* Cujus loci scopus, vis et ratio, ut melius intelligatur, animadvertendum est inter Apostolos Domini *Paulum* vel maxime copiosum esse in asserenda passim *gratuita* Dei *misericordia*, ineuntis cum hominibus peccatoribus *gratiæ fœdus*, et promissiones Evangelicas fideliter adimplentis, non obstante illa, quæ intus in corde latet, et in vita

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and done for a bad end, the goodness or badness of the act will correspond to and be measured by the amount of good or bad Intentions; meaning, by *Intention*, the act of intending, not the thing intended. As if a person take the Lord's Supper in order to impress on his remembrance the death of Christ, (a good act for a good end,) the more intently he turns his thoughts to that death, the better is that eucharistical act: and if a person calumniate his neighbour in order to do him harm, (a bad act for a bad end,) the more intently he thinks of that end, the worse is the act.

But neither the Intention as Act, nor the Intention as Object, suffices to make the Act good or bad.

5. The Arguments to prove this.

First, the passage, Rom. iii. 8, "And not, (as we be slanderously reported, and as some affirm that we say,) Let us do evil that good may come: whose damnation is just."

The Apostle condemns this mode of acting in the strongest manner.

For the connexion of this verse with what precedes, see the text.

See also the passage from St Augustine.

quotidiana palam et abunde se prodit, humana *injustitia* et *incredulitate.* Quas tamen tantum abesse profitetur, ut irritas faciant *gratuitas* Dei *promissiones,* ut e contra longe potius illustriorem reddiderint *gratiæ et veritatis* ipsius gloriam: siquidem [k] *ubi abundavit delictum, ibi constat superabundasse et gratiam.* Arripuere hinc calumniandi ansam, ex una parte, ut Apostoli auctoritatem imminuerent, *Sophistæ* et *Impostores;* ex alia, quo et viverent licentius et excusatius peccarent, profani pectoris *hypocritæ.* Nimirum, si vera essent quæ a *Paulo* dicerentur, cedere peccata hominum in majorem *Dei gloriam;* non esse cur Deus aut peccata *puniat,* aut peccantibus *irascatur;* non esse cur quis a peccando abstineat: imo vero peccandum esse uberius, ut uberiorem Deus adipiscatur gloriam, et omnino *facienda mala, ut eveniant bona.* Reliquas cavillationes diluit Apostolus justis responsionibus; ast ultimam hanc, *Faciamus mala ut eveniant bona,* ne dignatur quidem responsione: clamat tantum manifestam esse *calumniam* et *blasphemiæ* affinem, justumque Dei judicium interminatur (ni resipiscant) tam importunis calumniatoribus. Quasi esset hoc *sophisma* ex eo genere argumentorum, quibus non tam λύσιν quam κόλασιν deberi censuit *Aristoteles.* Unde manifestum est, quod et omnes interpretes agnoscunt, Apostolum constantissime negare, malum aliquod quantavis *bona intentione* fieri debere. *Interest quidem plurimum,* inquit [l] Augustinus, *qua causa, quo fine, qua intentione quid fiat: sed ea quæ constat esse peccata, nullo bonæ causæ obtentu, nullo quasi bono fine, nulla velut bona intentione facienda sunt.* Esto hoc *primum* Argumentum.

VI. *Secundum* sumitur a Natura *Mali* sive *Peccati;* quod ex sui natura nec est, 1° *Eligibile,* nec 2° *Ordinabile* ad bonum finem, 3° nec *aptum natum* ex se bonum aliquod producere. [m] *Eligibile* primo non est ex sui natura, et qua tale: quum nihil sit *eligibile,* quod non sit idem *expetibile:* et omne quod appetitur, sub ratione *boni* appetitur.

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[k] Rom. v. 20.

[l] Contra Mendac. cap. vii. [p. 456.]

[m] τὸ αἰσχρὸν οὐκ ἄν ποτε διὰ περίστασιν αἱρετὸν γένοιτο. Hierocl. [Comment. in Aur. Carm. vv. 11, 12.]

6. *Second* Argument.

Evil or Sin is neither 1° Eligible of itself; nor 2°, Capable of being made the means to a good end; nor 3°, Fit by its nature to produce any good.

1° Not Eligible of itself; for whatever is chosen for itself, is chosen as being good.

VII. Nec est Malum ex sui natura *ordinabile ad bonum finem.* Quod si esset, esset etiam *expetendum:* siquidem *appetitus* non solum fertur in *finem* ab agente propositum, sed et in ea, quæ ad finem illum consequendum conducere videntur. Si dicas, Deum *ordinare mala nostra in bonum finem* suum, proinde non esse contra naturam *mali,* ut ordinetur *in finem*
bonum. Respondeo *primo,* non esse eandem rationem omni- 1
potentis *Dei,* qui *naturæ Dominus* est, et potest pro beneplacito suo ex malo producere bonum; et *nostri,* quibus nec idem *jus* est, nec *potestas* eadem: sed nec nostrum esse de *Dei providentia* circa malum vel curiosius inquirere, vel
magistraliter pronunciare. Respondeo *secundo,* Deum qui- 2
dem *abuti* posse et solere *peccatis nostris* ut inserviant *gloriæ, gratiæ* et *providentiæ* suæ; quin et nobis pariter licere ipsius exemplo, pro data nobis opportunitate, *alienis peccatis abuti* in commodum nostrum *Temporale* vel *Spirituale:* sed tamen, quemadmodum Deus, etsi *utatur malo* alieno in *bonum,* nunquam ipse *facit malum,* ut inde eliciat *bonum;* ita nec nobis licere *malum facere, ut inde proveniat bonum.* Aliud est alieno *malo uti* in bonum, aliud *facere malum* cum inten-
tione boni. Respondeo *tertio,* posse aliquid dici *ordinari in* 3
finem dupliciter; vel *improprie et communiter,* quo modo *ordinari* dicitur quicquid quoquo modo ab *agente* adhibetur dum tendit ad suum *finem,* et postquam ab alio suapte sponte factum est, per potentiam et sapientiam ipsius *agentis* (præter *voluntatem et intentionem* ejus qui fecit,) ad illum finem assequendum disponitur: vel *restrictius et proprie,* et sic illud

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7. 2° Not capable of being made the means to a good end: for if so, it would be desirable; for desire tends, not only to the end aimed at, but also to the means which conduce to that end.

Objection. It may be objected that God makes our evil deeds subordinate to his good ends.

Answer. (1) God's ways are different from ours. With regard to God's Providence concerning evil, we are not to imagine too curiously, nor to pronounce too magisterially.

(2) Our sins may further God's glory, grace and providence; and so, the sins of others may happen to further our temporal or spiritual good. But God does not do evil; and so we may not do evil that good may come. To obtain good from evil, and to do evil with the intention of obtaining good, are different things.

(3) Things may be made means to ends in two different ways: Evil things may be employed in order to good ends, that is, may be

solum dicitur *ordinari ad finem,* quod ab [n]*agente* antecedenter *eligitur,* ut *medium* ex sui natura conveniens et conducibile ad talem *finem.* Priori sensu intelligatur oportet, siquando dicimus Deum *ordinare mala* in bonum finem; id est, Deum pro infinita sua sapientia et potentia *uti malo* in bonum, vel ex *malo* elicere *bonum:* sed *omnino* cavendum ne ejusmodi locutiones posteriore et proprio sensu intelligantur, ac si Deus malum aliquod antecedenter *vellet, approbaret,* aut *eligeret,* velut *medium* ex sui natura conveniens ad alicujus *boni finis* consecutionem.

VIII. Est etiam prorsus alienum a *peccati* natura, ut ex se *bonum effectum* producat: sicut nec potest [o]*mala arbor ex se bonum fructum proferre,* nec tenebræ ex se lucem. Sed idem ille Deus Opt. Max. qui pro sua omnipotentia [p]*eduxit e tenebris lucem,* potest etiam ex *peccatis* nostris occasionem sumere illustrandæ summæ suæ *sapientiæ, justitiæ* et *bonitatis.* Verum hi sunt effectus *potentiæ divinæ,* ut causæ per se et proprie efficientis, ad quorum productionem nihil adjumenti conferunt aut virium *peccata nostra,* quæ habent se quantum ad ejusmodi effectus mere *contingenter* et *per accidens.* Ergo illa Davidis verba quæ versu quarto istius capitis adducit *Paulus* e *Psalm.* li, *Contra te peccavi, ὅπως ἂν δικαιωθῇς, ut justificeris in sermonibus tuis,* non ita sunt intelligenda, quasi aut *eo fine* David adulterium et homicidium perpetrasset, aut *eo fine* alterutrum ipsi perpetrare licuisset, ut sic tandem *justificaretur Deus in sermonibus suis.* Sed est ibi intelligendum illud ὅπως, ut et aliæ particulæ ejusdem potestatis, ἵνα, ὥστε, etc. in plurimis Scripturæ locis, non

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[n] ...*Non convenire bono viro vitiis uti.* Quintil. Instit. Orator. VI. i. [7.]

[o] Matt. vii. 18.

[p] 2 Cor. iv. 6.

used for good purposes, or have good extracted from them, without regard to the purpose of the agent. In this way, God makes evil the means to good:—but this is an inexact use of the phrase. The more exact and proper use is, when the agent purposely makes things the means to his ends. God does not, in this sense, will, approve, or choose anything which is evil as a means, by its nature, fitted to promote a good end.

8. Confirmation of this from Scripture. Matt. vii. 18, 2 Cor. iv. 6. Psalm li. 4, "That thou mightest be justified," quoted by St Paul, Rom. iii. 4, is not to be understood as if David had sinned for that end; but that such was the event; as if he had said, "So that thou art justified."

αἰτιατικῶς sed *ἐκβατικῶς*, ut sæpe distinguendum docet *Chrysostomus:* hoc est, ita ut *eventum* notet duntaxat, non veram rei *causam.* Quemadmodum enim potest qui serio philosophatur, ex jam concessis ab alio *falsis præmissis* veram inferre *conclusionem;* ridiculum tamen se præberet interim, si ad firmandam *veram conclusionem* ipse falsi aliquid ultro assumeret, quia *verum non indiget falsi patrocinio:* sic potest Deus, (quod et nobis etiam aliquatenus licet,) aliorum *male factis uti in bonum;* sed nec justitiæ divinæ bonitatique congruit, nec nobis ullatenus licitum est, velle *malum facere,* ut inde proveniat *bonum.*

IX. *Argumentum tertium* sumitur a natura *boni actus:* ad cujus complementum omnium requisitarum *conditionum concursus* ita est necessarius, ut si e tam multis una aliqua abfuerit, cæteris licet præsentibus, actus ille non censendus sit moraliter bonus. Celebre est illud axioma, *Bonum ex causa integra, Malum ex quolibet defectu:* et constat in omni genere rerum plura ad *construendum* requiri, quam ad *destruendum.* Sufficit quidem *defectus bonæ intentionis* ad hoc ut aliqua *actio* sit *mala,* (cujus enim *finis malus* est, et ipsum est *malum:*) sed non sufficit aut *finis bonus,* aut *bona intentio,* ad hoc ut *actio* sit *bona,* nisi adsint et cæteræ *conditiones* requisitæ. Requiruntur autem ad hoc, ut *actio* aliqua, sive *interior* voluntatis, sive *exterioris* operis, sit *bona,* tres distinctæ *bonitates:* bonitas scilicet *Objecti,* bonitas *Finis* et bonitas *Circumstantiarum.* Qualitas cujuslibet *Actus* primo et principaliter pendet ex qualitate *Objecti* sive *Materiæ circa quam* versatur: ita ut inde denominetur *Actus* quilibet, indefinite et

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9. *Third* Argument.

A good act requires the concurrence of all requisite conditions, according to this maxim; "Good comes of the entire cause; evil, of any defect." In all things, more is requisite to construction than to destruction.

And thus, the Defect of good intention is sufficient to make the action evil; but the Presence either of a good end or of a good intention does not suffice to make the action good, except the other requisite conditions also be present.

But to make any act good, (either interior act of the Will, or exterior Act,) there are required, goodness of the *Object,* goodness of the *End,* and goodness of the *Circumstances.*

The quality of any act, (as good or bad,) depends first and principally on the Object or Matter: so that from this, an act is indefinitely,

quoad totam suam speciem, *Bonus* vel *Malus.* Sic dicimus esse *Furtum* et *Adulterium* de tota sua specie *Mala; Eleemosynam* et *Precationem* de specie sua *Bona.* Hoc tamen observato discrimine, quod quæ *mala* sunt *simpliciter, mala* sunt, nec possunt ratione cujuscunque *finis* quantumlibet boni, aut quarumcunque vel commodissimarum περιστάσεων, fieri *bona:* at quæ natura sua *bona* sunt, possunt tamen a *fine aut* indebitis *circumstantiis* ita vitiari, ut desinant esse *bona,* et fiant *mala.* Supposita ergo *pravitate Objecti,* abstinendum est protinus ab *actu,* ut simpliciter *malo,* veluti a *Furto,* ab *Adulterio,* etc., nec opus est ulteriori examine. At supposita bonitate *Objecti,* non statim cuiquam tutum est ad agendum se comparare, aut quod actum fuerit comprobare; nisi expensis prius diligenter et *Fine* ad quem dirigitur, et singulis quibus quasi vestitur *Circumstantiis.* Illa ergo quæ dici solent, *Bonitatem actuum pendere a fine,* et *Finem discriminare actiones,* eatenus quidem vera sunt, si actus ratione *Objecti* sive *Materiæ* sint boni, vel saltem medii et indifferentes; non autem si mali. *Objecti* enim bonitate supposita, *Actus* bonitatem suam et malitiam præcipue sumit a *Fine.* Exempli gratia, *actus* erogandi in pauperem *eleemosynam,*

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and as to its kind, called good or bad. Thus Theft and Adultery, are, by their kind, bad: Alms and Prayer are, by their kind, good. But there is this difference:—Acts which are bad are simply bad, and cannot become good by reason of any end, however good, or any circumstances, however suitable: but Acts which are good may, by reason of the end, or of undue circumstances, cease to be good and become evil. And thus if the Object (or kind of the act) be supposed bad, the act must be absolutely avoided without further inquiry, as Theft or Adultery. But if the act be good, as to its kind, we cannot yet approve of it, till we have considered the end and the circumstances. And thus what is often said, that "the goodness of an act depends on the End," and that "the End makes the difference of actions," is true so far, if the acts are good as to their kind, or at least if they are indifferent, but not if they are bad. Supposing the goodness of the action as to its kind, it does take its goodness or badness mainly from the End. Thus Alms to the poor, an Act good as to its kind, if it be done for vain glory, becomes evil, because it is not done in order to a good End. The same act, if done to relieve the need of our neighbour, is so far good, that it is good as to the matter, and done with a right intention; and thus has goodness of the Object or Matter, and goodness of the End; but yet it cannot forthwith be called simply good, unless it be duly circumstanced: [for instance, that in giving

qui est actus *bonus* respectu *materiæ* sive *objecti,* si fiat *ob inanem gloriam,* fit moraliter *malus,* eo quod non ordinatur ad rectum *finem.* Idem *Actus,* si fiat ad sublevandam proximi indigentiam, est quidem hactenus *bonus,* quod et sit de *materia licita,* et fiat *intentione recta,* adeoque habeat utramque illam de quibus jam diximus bonitatem, *Objecti* sc. et *Finis:* non tamen adhuc dici potest simpliciter *bonus,* nisi fuerit insuper debite (ut loquuntur) *circumstantionatus.* Requiritur enim ad complementum *boni operis,* ultra *bonitatem* illam quæ est ex parte *Objecti,* et illam quæ est ex parte *Finis,* tertia etiam *bonitas* ex parte *Circumstantiarum.* Unde dici solet, *bonitatem actus pendere ex circumstantiis:* non primario et principaliter; sed ultimate et completive; suppositis nimirum bonitate *Objecti,* et bonitate *Finis.* Cum ergo ad *bonitatem* cujuslibet actus moralis *tria* hæc requirantur, idque conjunctim, *Materia* licita, *Intentio* recta, et debitæ *Circumstantiæ;* manifestum est *rectam intentionem* per se solam non sufficere: et ex consequenti non posse bona conscientia fieri quidquam, quacunque tandem *intentione* fiat, quod aut ex se ratione *Objecti* illicitum est, aut redditur ex *Circumstantiis* vitiosum.

X. Ast huic rationi opponet fortasse quispiam verba illa Christi, *Matth.* vi. 22; *Si oculus tuus sit simplex, et totum corpus tuum lucidum erit: si autem oculus tuus sit pravus, erit totum corpus tuum tenebrosum.* Ubi si per *Oculum* intelligatur *Intentio,* (quæ mens est omnium fere interpretum;)

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alms, we should give only what is our own]. For to make an act good, there is required, besides the goodness of the Matter, and of the End, the third condition, the goodness of the Circumstances. Whence also it is often said that the goodness of an act depends on the Circumstances, not primarily and principally, but ultimately and as a condition of its completeness; supposing the goodness of the Matter and of the End.

And thus these three conditions being required for the goodness of an Act,—lawful Matter, right Intention, and due Circumstances; it is plain that right Intention of itself does not suffice: and nothing can be done with a good Conscience, with whatever Intention, which is, by reason of the Matter, unlawful, or vitiated by the Circumstances.

10. Perhaps some one will urge in objection the words of Christ. Matth. vi. 22, "If thine eye be single, thy whole body shall be full of light: but if thine eye be evil, thy whole body shall be full of darkness." The interpreters say that the *Eye* here means the Intention;

videtur ex bonitate *Intentionis* omnino pendere bonitas totius *Actus*, idque adæquate: ita ut quas vires habet *mala intentio* ad vitiandum *actum*, etsi alias *bonum*, easdem vires habeat *bona intentio* ad probum efficiendum actum, etsi alias *malum*. Tam enim efficax est *oculus simplex* ad inferendum toti corpori *lumen*, quam est *oculus malus* ad inducendas *tenebras*. In quam sententiam multa afferri possent dicta *Patrum* et aliorum *Theologorum*: quale est illud *Glossæ*, *Quantum bonum intendis, tantum facis*; et ille nescio cujus e trivio versiculus, *Quicquid agunt homines intentio judicat illos*; et istis similia plurima.

XI. Ad locum *Matth.* vi. quod attinet, imprimis non sum nescius ex illis Christi verbis posterioris ævi viros doctos alium sensum eruisse, ab illo veterum longe diversum, nec ei qua de re nunc agitur affinem. Dato tamen, ob debitam a nobis priscis illis Doctoribus reverentiam, dictum illud Servatoris, hominum *intentiones* præcipue respicere; Respondeo *Intentionem*, cum sit motus voluntatis tendentis ad aliquem *finem* per quædam *media*, dupliciter posse considerari. Vel prout dicit *intuitum illius boni*, in quod voluntas finaliter fertur, *præcise*, abstrahendo sc. ab omni consideratione *mediorum*: ut siquis dicat se intendere *gloriam Dei*, vel *utilitatem* aut *voluptatem* propriam. Vel prout dicit integram *ordinationem totius processus* ab initio operis ad finem, includendo etiam et *Media*: ut siquis dicat se intendere *gloriam*

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and thus, this passage asserts that the goodness or badness of actions depends on the goodness or badness of the Intention. And a good Intention is of the same efficacy to make actions good as a bad Intention is to make them bad: for a single eye is represented to be as efficacious to fill the whole body with light, as an evil eye to fill it with darkness. And in agreement with this there is a maxim,

"Intention stamps the judgment on men's acts."

11. We reply, that granting this interpretation, that these words of our Saviour have reference to Intention, (although more recent interpreters give them quite another sense,) we must distinguish two senses of *Intention*. It may be taken to refer to the regard had to the end only, the good at which we aim; as when any one is said to intend or to aim at the glory of God, or his own advantage, or his own pleasure; or *Intention* may be taken as including the whole process, end and means together: as when any one is said to intend or to aim at the glory of God by building a temple, or by slaying an idolater; to intend or aim at his own advantage, by getting money by honest labour, or by theft and robbery. Thus a man is said to intend to travel to

Dei extruendo templum, vel occidendo idololatram; aut intendere *utilitatem propriam* comparando sibi divitias honesto labore, vel furto et rapina. Quemadmodum dici potest iter *intendere Romam*, et is qui de eundo *Romam* tantum cogitat, nec dum statuit qua via sit eo profecturus; et is etiam qui simul et *quo* sibi eundum cogitat, et *qua*. De *Intentione primo modo sumpta* nos in tota hac quæstione loquimur, sc. ut *finem* solum respicit, non item *media:* et ita fere sumitur in communi usu loquendi. Ast dicta illa *Patrum* et aliorum *Theologorum*, quæ videntur ex sola *intentione* metiri *bonitatem et malitiam* humanorum actuum, et in illis Christi verbis de *oculo simplici et pravo* fundantur, *Intentionem* accipiunt in *posteriore significatione*, prout una cum *Fine* includit et *Media*. Scitum est illud [q] Bernardi, *Ut oculus,* inquit, *sit simplex, duo sunt necessaria: scilicet ut veritas sit in electione, et caritas in intentione.* Hoc est, ut *intentio* nostra sit absolute recta, utrumque requiritur: ut nec proponamus nobis *finem*, qui amori Dei et proximi adversetur; nec *media* eligamus quæ non sint cum justitia et honestate conjuncta. In omni igitur opere, non id solum spectandum est, ut sit nobis *bonus* propositus *finis;* sed et opera insuper adhibenda, ut *idoneis*, legitimis ac honestis *mediis* ad scopum sic propositum contendamus. Cum enim *electio mediorum* ex *intentione finis* oriatur, et sit cum ea ita necessario connexa, ut habeat respectu ejus rationem *accidentis* cujusdam *inseparabilis*, vel necessariæ *circumstantiæ:* Scholastici fere concludunt [r] *electionem malam* vitiare *intentionem* alias *bonam*, reddendo eam ex bona malam; eodem omnino modo, quo *malæ circumstantiæ* vitiant *actiones*, quarum sunt appendices.

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[q] [de præc. et dispens. cap. xvii.]

[r] *Animum laudo, [sed] consilium reprehendo.* Cic. ix. ad Attic. [9. 2.]

Rome, in one sense, when he merely thinks of Rome the end of his journey, and in another sense, when he thinks of the road as well as of the end.

Now we, in this discussion, speak of *Intention* in the former sense; but the interpretation of the words of Christ which makes Intention determine the merit of actions, assumes the latter sense of *Intention*, including the Means as well as the End.

To this effect speaks St. Bernard: "Two things are needful in order that the eye be single; namely, truth in the election, and charity in the intention:" that is, both these things are requisite that the intention be absolutely right.

XII. *Argumentum quartum* sumitur a Legis divinæ perfectione et obligatione. Proposita nimirum est hominibus a Deo *Lex;* Lex perfectissima, quæ facienda *præcipit, vetat* non facienda. *Indicavit tibi, O homo, quid sit bonum, et quid requirat a te Dominus, Mic.* vi. 8. Huic *legi,* siquidem satisfacere velimus officio nostro, pareamus oportet. Hac *lege* jubemur, quod et passim in Scripturis inculcatur, *bonum* agere, *malum* fugere. Quod si nos e contra, ubi nobis ipsis visum fuerit, *agenda fugiendaque,* susque deque habita *Lege Dei,* ex nostro commodo metiamur; et vel ea quæ Deus fieri *præcipit bona* metu insecuturi inde alicujus mali *omittamus,* vel ea quæ fieri *vetat mala* intuitu proventuri inde alicujus boni *admittamus:* quid hoc aliud est, quam omnipotentis Dei expressæ *voluntati* nostra homuncionum *consilia* anteferre, et *prudentiæ carnis* postponere sapientissimi *Spiritus auctoritatem?* Longe aliter vir sanctus David; *A mandatis tuis intellexi, propterea odivi omnem viam iniquam, Psalm.* cxix. 104, quasi dicat, edoctus e *lege tua,* (quæ mihi de die, de nocte, in corde est, in ore, in manibus,) quæ mihi *agenda* sunt plane intelligo, quæque *fugienda:* quapropter omnem *viam* quæ legi tuæ consentanea non est, quocunque me tandem perducere videatur, non *declino* solum, sed et *odi.* Cum itaque vetitum sit *Lege Dei* omne *malum,* nec contineat ea *lex* ullam exceptionem *intentionis* aut *eventus* boni, nec sit *distinguendum ubi lex non distinguit,* aut excipiendum ubi lex non excipit: omnino constat peccare eum contra *Legem Dei,* quisquis quacunque de *causa,* quacunque *intentione,* sciens facit quod *malum est.*

XIII. Sequitur *argumentum quintum,* ab exemplis eorum, qui *boni finis* obtentu, expresso Dei præcepto ausi

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12. *Fourth* Argument.

The command of God is absolute, to choose the good and shun the evil (Mic. vi. 8). Hence if we choose and shun good and evil according to notions of our own, we violate God's law, and subject the authority of the spirit to the prudence of the flesh. See Ps. cxix. 104. The Law which forbids evil, makes no exception in favour of good intention or good result.

13. *Fifth* Argument.

Those, who on the ground of a good end, contravened the express command of God, were punished: as Saul for sparing the Amalekites. 1 Sam. xv.

Perhaps it may be said this merely was a pretext of Saul, devised when

contravenire, irato Deo justas dederunt temeritatis suæ pœnas. *Sauli* Hebræorum Regi, qui *Amalekitarum* pecori, quod Deus universum deleri mandaverat, pepercit, eo *fine* (uti saltem præ se tulit) ut inde *opimam* Deo *victimam* immolaret, missus a Deo *Samuel* propheta, et peccati gravitatem ob oculos posuit, et in tantæ inobedientiæ pœnam, futuram Regni amissionem ei prædixit. Si cui hoc exemplum firmandæ rei propositæ parum idoneum eo videbitur, quod non constet Saulem *bona intentione* id fecisse quod fecerit, nec eum *finem*, quem postea tamen obtendit, sibi in animo fixum et propositum tum habuisse cum id faceret; quin potius vero similius sit eum non aliud adhuc, quam *temporale commodum* suum spectasse; postquam autem ei objectum esset a propheta et crimini datum quod Dei mandato non obaudivisset, tum demum (quod hypocritis solenne est) istam excogitasse inobedientiæ suæ *excusationem* et quasi *σοφὸν φάρμακον*: ne quid nobis molestiæ creet hæc exceptiuncula, observandum est, ubi accedit *inobedientiæ hypocrisis*, non tam *augeri* crimen quam *duplicari*. Fuisse quidem *Saulem* duplicis culpæ reum nullus dubito; *Inobedientiæ* et *Simulationis:* ut interim taceam tertiam illam utriusque radicem, *Mundanum affectum.* Distincta utique sunt duo ista peccata*;* et nec *natura,* nec *tempore* conjuncta. Non *natura;* quia potest esse alterutrum sine altero: non *tempore;* præcessit enim aliquandiu *inobedientia,* accessit postea objecta *nova* occasione *simulatio.* Id quod ex ipsis *Samuelis* verbis non obscure colligi potest: qui dissimulata prorsus Regis *simulatione,* unam ejus *inobedientiam* severe admodum et acriter reprehendit. [8]*Potior est,* inquit, *obedientia sacrificio.* Quasi diceret, Quid mihi *sacrificia* narras? quæ, seu

[8] 1 Sam. xv. 22.

he was accused by Samuel. And no doubt Saul was guilty both of Disobedience and of Simulation: not to speak of a third crime, the root of the others, Mundane Affection. But those two offences are distinct in nature and in time. Samuel reprehended Disobedience only; "Obedience is better than sacrifice;" "Even if that was your intention, it does not justify your disobedience."

Also consider the example of Uzzah, who, 2 Sam. vi. put forth his hand to support the Ark of God; violating the command, Num. vii. 9, and iv. 15, that the sons of Kohath should bear it on their shoulders. Here the intention was undoubtedly good, yet the act was punished with immediate death by God.

bona fide ante *intenderis,* seu nunc demum excusandæ inobedientiæ tuæ *obtendas,* perinde est ad obsequii rationem. Mos erat gerendus *præcipienti* Domino, et quod abs illo in mandatis acceperas prompte et sine disceptatione adimplendum. Sed enim utcunque se habeat res *Saulina,* illud interim certum est, *Uzzam* (cujus historia, 2 *Sam.* vi, perscripta legitur) non simulate, sed *bona fide* et pia admodum *intentione* sacro vasi manum admovisse; ne scilicet excuteretur in terram *Arca fœderis,* (quod erat tunc temporis et sub œconomia veteris Testamenti tremendum *divinæ præsentiæ* symbolum) cum, succusso vehementius quo vehebatur plaustro, velut mox ruitura nutaret. Levicula hac (ut quibusdam visa) sed importuna temeritate, etsi nulla subesset *mala mens,* commeruit tamen, ut magna spectante populi corona immissæ divinitus mortis præsenti supplicio afficeretur. Edixerat nimirum jamdiu Dominus Jehova [t] *Arcam humeris* sacerdotum gestandam esse, non *plaustro* imponendam; nec ulli fas esse extra *ordinem sacerdotalem,* idque gentis tantum *Kohathitarum,* Arcæ deportandæ operam dare, aut [u] *rem sacram* attingere; qui secus faxit, mala morte periturum. Hac igitur in primum ejus legis violatorem severa animadversione voluit Deus *Legi suæ* reverentiam conciliare, ejusque *auctoritatem* conservare; ne quis ausu temerario contra id quod ipse sanciverat agere aliquid aggredive, quocunque prætextu, præsumeret. *Accensus enim ira percussit eum ibi Deus propter imprudens hoc factum, ita ut moreretur ibi prope arcam Dei,* 2 *Sam.* vi. 7.

XIV. *Argumentum ultimum,* ab incommodis contrariæ sententiæ. Multa sunt illa: sed ego ne multus sim, unicum illud urgebo, quod instar multorum est, et ab *Augustino* sæpe urgetur. Nempe, refixis *Legum* repagulis, omnia diffluere, et in incertum ferri: velut ruptis obicibus undæ maris, ubi semel ripas excesserint, non se patiuntur certis limitibus contineri, sed per omnia vicina loca longe lateque vagantur. *Qui semel limites modestiæ transilierit, gnaviter hunc impu-*

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[t] Numer. vii. 9. [u] Numer. iv. 15.

14. *Sixth* and last Argument.

If we do not acknowledge the obligation of Laws, every thing becomes loose and unsettled. Augustine says that there is no crime which may not be committed, if we once begin to consider not what is done, but why. If an evil act may be committed to avoid a greater

dentem esse oportet, inquit ille. Sed [v] *Augustinum* potius audiamus. *Quod sceleratissimum facinus, quod turpissimum flagitium, quod impiissimum sacrilegium* (hem! annon suspicamini eum de nostro hoc seculo, nostrisque rebus vaticinatum?) *non dicatur fieri posse recte atque juste, si semel concesserimus in omnibus malis operibus hominum ideo non quid fiat, sed quare fiat, quærendum, ut quæcunque propter bonas causas facta reperiuntur, nec ipsa mala esse judicentur?* Atque iterum, *Cum concesseris admittendum esse aliquod malum, ne aliquid gravius admittatur; non ex regula veritatis, sed ex sua quisque cupiditate aut consuetudine metietur malum et id putabit gravius, quod ipse amplius exhorrescit, non quod amplius revera fugiendum est.* Vis argumenti huc redit. Si *facienda sint mala, ut eveniant bona;* quum certum sit non esse *omnia mala* facienda, nec propter *quævis bona;* aut utrique huic dubitationi certus statuendus est modus, (*primo, Quænam mala* sunt facienda, ut eveniant bona, et quæ non? *secundo*, propter *quænam bona* aliqua mala sunt facienda, et propter quæ non?) aut uniuscujusque hominis judicio permittendum est, arbitrari prout res tulerit, et ipsi visum fuerit, *quid* faciendum et *quid non*, et *propter quid.* Quorum utrumvis concedatur, nihil inter homines tutum erit, nihil sanctum, nihil ab injuriis, perjuriis, fraudibus, rapinis, cædibus, perduellionibus

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[v] contra Mendacium, cap. vii. [n. 18, Opp. Tom. VI. p. 456. D.]

evil, every one will measure evil by his own desires or habits, and will think that the greatest evil, which he himself most dislikes.

In short, if we may do evil that good may come, since we may not do all evil, nor for any good, either we must set limits to each of these doubts, (what evils may be done, and for what good they may be done;) or we must leave it to each man's judgment, what may be done and what not, and for what end: either of which opinions being granted, nothing will be secure, nothing sacred, nothing safe from injury, perjury, fraud, rapine, murder, treason and rebellion. Religion, Justice, Equity, Faith and Peace will quit the earth.

[We may remark upon this, however, that Sanderson takes for granted that the laying down Rules, as to what smaller sins may be committed to secure what greater good, must necessarily lead to consequences utterly immoral: whereas this is not manifest. On the contrary, some moral writers have attempted to lay down such Rules. The impossibility of doing this consistently with sound morality, may, I conceive, be shewn, but cannot properly be assumed as self-evident.]

immune: exulent necesse est e terra, sine quibus conservari non possunt Respublicæ et hominum societates, *Religio, Justitia, Æquitas, Fides, Pax.*

XV. Satis jam, ut opinor, confirmata, quam probandam suscepi, *Conclusione;* non abs re alienum fuerit, nec vobis uti spero ingratum, certe non inutile, *Corollaria* inde nonnulla deduxisse, quæ nobis omnibus ex usu sint ad vitæ et morum institutionem. Ex antedictis ergo illud imprimis sequitur, cavendum esse piis omnibus, ne *zelo gloriæ Dei* abrepti, ad illicita perpetranda ferantur. Esse *Dei gloriam* omnium operationum nostrarum *finem supremum* et ultimum, nemo rite Christianus neget. *Sive edamus, sive bibamus, sive quid aliud faciamus, omnia ad Dei gloriam referantur* oportet, 1 *Cor.* x. 31. Ast præpropero et præpostero *gloriæ Divinæ zelo* permoti, quantas contumelias, quas strages ediderint olim in populo Judaico ejus factionis homines, cui *Zelotarum* peculiare cognomen adhæsit; et inter Christianos, patrum memoria, in *Germania* et alibi *Anabaptistæ,* a viris fide dignis et rerum suis temporibus gestarum gnaris prolixe perscriptum est. In quorum monimentis tam horrenda facta, et ab omni humanitate aliena narrantur; ut vix ullam apud nos essent habitura fidem, nisi eandem fabulam quotidie videremus ab infelici ipsorum sobole, translata tantum in *Britannias* has nostras scena, strenue actitari.

XVI. Nequis igitur vestrum hoc tam splendido artificio aut alios *decipiat,* aut ab aliis *decipi* se patiatur; cogitate
1 *primo,* omnes *seductores,* Satanæ ministros, a summo seductore *Satana,* qui se [w] *transformare solitus est in Angelum lucis,* edoctos non aliis artibus plus profecisse, aut imposturas suas plebi Christianæ obtrusisse, aut pacem Ecclesiarum et

[w] 2 Cor. xi. 14.

15. Hence follow certain Corollaries.

First. We must guard against being carried away by zeal for the glory of God to do unlawful acts.

Examples of this danger are the Zelotæ among the Jews, the Anabaptists in Germany, and the like fanatics recently in Britain.

16. To avoid this danger, we must recollect, *First,* that seducers have used this pretext, of the glory of God, to disturb Churches and States, as complained of by protestant Divines:

Second, that the Apostles only mention the glory of God in order to peace and brotherly love, but these for contention:

Third, that the glory of God, as respects single actions, is a tran-

Rerumpublicarum perturbasse efficacius, quam *obtentu gloriæ Dei, reformandæ Religionis, propagandi Evangelii, extirpandæ superstitionis, exaltandi regni Domini nostri Jesu Christi.* Conquesti sunt graviter hac de re passim in suis scriptis Protestantium Theologorum proximi retro seculi nominatissimi quique, *Calvinus, Bucerus, Zuinglius,* reliqui. In his vir eruditione, modestia, pietate paucis secundus *Hieronymus Zanchius, Ego non intelligo,* inquit, *istam Reformatorum mundi Theologiam.* Utinam earum rerum, quæ nunc apud nos geruntur, experientia non confirmaret nimis esse verum illud quod vulgo dicitur, *In nomine Domini incipit omne*
malum. Cogitate *secundo,* quanta cum perversitate *gloria* 2
Dei bellis, tumultibus, rixosis contentionibus et disputationibus inutilibus prætexitur: cujus Sancti Domini *Apostoli* vix unquam in suis *Epistolis* meminerunt (meminerunt autem frequenter) nisi in ordine ad *pacem,* et fraternam *dilectionem,* et suavem illam (quæ maxime Christianos ornat) in rebus adiaphoris *συγκατάβασιν,* ne quis *libertate* qua Christi beneficio fruimur ita abutatur, ut sit aliis *offendiculo* vel *gravamini.* Cogitate *tertio,* debere eum qui sibi *Dei gloriam* pro- 3
ponit ut *finem, Legem etiam Dei* sibi proponere ut *regulam* omnium actionum suarum. *Ad legem, et ad testimonium. Esa.* viii. 20. Esto, ut par est, *gloriæ Dei* intuitus, agendi *finalis causa:* at *norma agendi* et quasi *ratio formalis,* non est *gloria Dei,* sed *voluntas* ejus revelata. Illa ergo in toto vitæ decursu *spectanda* est, ut *meta* ad quam currendum; sed et hæc *consulenda,* ut rectam insistamus *viam* qua ad metam perveniatur: ne illud in nos merito jaciatur

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scendental end; and no particular action is immediately subject to a transcendental end, but only through the mediation of intermediate ends and laws. As no particular thing or being is immediately subjected to the genus *Being,* but only through the intermediation of some one of the Ten Predicaments; so, in like manner, particular actions are not directly subject to the end, the glory of God, immediately, but through some of the Ten Commandments. The glory of God is the end of all the duties contained in those commandments, expressly or virtually. And as nothing really belongs to *Being* which has not a place under some of the Ten Classes of Predicaments, so nothing really tends to God's glory which has not a place among the duties of piety and charity in one of the Ten Commandments. Hence a person who professes to act for the glory of God, and cannot say *which* Commandment of the divine law he obeys, trifles with morality.

4 quod dici solet, *Bene curritis, sed extra viam.* Cogitate denique, *gloriam Dei* respectu actionum singularium habere rationem *finis transcendentalis. Transcendenti* autem palam est nullum individuum immediate subjici: velut *Enti, ut Ens* est, non immediate subjicitur aliquod *Entium singularium*, sive substantiale, sive accidentale. Sicut ergo *Ens transcendentale* verificatur de omni *Ente*, sive id *universale* sit sive *singulare*, quod est in aliquo *decem prædicamentorum:* sic *gloria Dei* est finis omnium *officiorum* quæ in aliquo *Decalogi præcepto* expresse aut virtualiter continentur, omniumque actuum eo pertinentium. Colendus est *Deus, parentes* honorandi, diligendi *proximi, fides* servanda, *justitia, veracitas, castitas* colenda, ceteraque *pietatis et caritatis* munia præstanda, in honorem et *gloriam Dei.* Ceterum sicut nihil habet vere rationem *Entis*, quod non apte reducatur ad aliquam *speciem Entis* in aliqua *decem* classium *Prædicamentalium:* sic nulla particularis *actio*, quicquid homines intenti in rem suam vociferentur, vere et proprie ad *gloriam Dei* tanquam finem refertur; quæ non sit reducibilis ad aliquod *officium* pietatis et caritatis, in aliquo *decem præceptorum* legis divinæ fundatum. Ludit ergo, quisquis *gloriam Dei* obstrepere crepat; nec tamen dicere valet, quæ se facere profitetur propter *gloriam Dei*, quo *legis divinæ* præcepto ea tueatur.

XVII. Ex prædicta *Conclusione* sequitur *secundo*, errare eos vehementer qui sibi licere putant, *peccatum* aliquod *minus* facere, ut vitetur aliud *peccatum majus.* In quam partem multa afferri solent. Imprimis pervulgatum illud omnium in ore, [x] *E malis minimum eligendum;* cujus dicti hanc etiam afferunt ex *Aristotele* rationem, quod scilicet [y] *minus malum*, si cum majore comparetur, habet rationem *boni.* Addunt et ex [z] *Gregorio* Magno, *Dum mens inter minora et maxima peccata constringitur, si nullus omnino sine peccato evadendi aditus pateat, minora semper eligantur.* Nec de-

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[x] τὰ ἐλάχιστα ληπτέον τῶν κακῶν. Aristot. Eth. Nic. II. 9.

[y] ἐν ἀγαθοῦ λόγῳ γίνεται τὸ ἔλαττον κακὸν πρὸς τὸ μεῖζον κακόν. Id. Eth. Nic. v. 7.

[z] [Moral. in Libr. Iobi, Lib. xxxii. § 35.]

17. Second Corollary: It is not lawful to commit a smaller sin in order to avoid a greater sin.

Arguments used are: The maxim, that of evils we must choose the least; with the authority of Aristotle and of Gregory the Great; the example of Lot, who offered his daughters, to prevent worse crime; &c.

Answer, *First*, The maxim applies to evils of suffering, not to evils

sunt piorum virorum *exempla;* in quibus eximium est illud
Lothi factum, et præ ceteris illustre: quem impuris *Sodomæ*
incolis, ad nefandas libidines vitandas, *stuprum filiarum* sua-
rum suasisse legimus, *Gen.* xix. [8.] Longum esset omnia per-
sequi: ut plurima in pauca contraham, *Dico primo,* dictum 1
illud *e malis minimum,* intelligendum proprie et primario de
Malis (ut vocant) *Pœnæ,* non *Culpæ;* hoc est, non de *pec-
catis,* sed de *externis incommodis* hujus vitæ inter se collatis.
Quo modo *David,* proposita sibi trium malorum optione, *Belli,
Famis, Pestis,* pestem [a]elegit ut e tribus malis *minimum.*
Dico secundo, obtinere id dictum ulterius etiam, hoc sensu: 2
Propositis *duobus malis,* altero *pœnæ,* altero *culpæ,* si utrum-
que vitari non potest, sed alterutrum eligi necesse est; eligen-
dum est *malum pœnæ* potius quam *malum culpæ:* quia e
duobus *minus est malum,* pati malum quam facere. Ergo
eligenda potius est *amissio bonorum* quam *abnegatio fidei:*
et *exulare* eligendum est potius quam *pejerare.* Hinc illud
animi robur priscis *Martyribus,* spoliari, torqueri, mactari
paratioribus, quam thurificare idolis, aut aliquid in se admit-
tere quod esset inhonestum, aut Christiano nomine indignum.
Dico *tertio,* Si proponantur alicui *duo peccata* facienda, quo- 3
rum utrumque constat esse *peccatum,* neutrum esse *eligendum,*
sed utrumque vitandum. Atqui supposito utrumque vitari non
posse, sed alterutrum *necessario* esse faciendum, quod *Gregorii*
verba illa manifeste supponunt; quid hisce in angustiis posito
suadendum esse putes? inquietis. *Respondeo,* id supponi non
posse. Cum enim *omne peccatum tam sit voluntarium, ut si
non esset voluntarium non esset peccatum,* ut recte [b]*Augusti-
nus,* fieri non potest ut aliquis in eas angustias redigatur, ut ei

[a] 2 Sam. xxiv. 14: τῶν τριῶν κακῶν ἕν: vid. Suidæ Lex. τῶν τριῶν.

[b] [de vera Relig. c. xiv. n. 27, Tom. I. 755. D; Retract. I. xiii. n. 5, Tom. I. 18. D.]

of sin: as when David had to choose between war, famine, and the sword (2 Sam. xxiv.).

Second, the maxim applies thus; If an evil of suffering and an evil of sin be proposed as alternatives, the former is to be chosen; for it is a less evil to suffer an evil than to do one. Thus we must choose loss of goods, rather than denial of our faith; exile, rather than perjury. This is the case of the Martyrs.

Third, If two sins are proposed, neither is to be chosen; both are to be avoided.

Objection: But it is supposed that both cannot be avoided; that necessarily one of them must be done.

Answer: This cannot be supposed, for all sins are voluntary. If

[c]*necessario* sit peccandum. Adeo ut ipse sibi contradicat, si-quis dixerit se mera *necessitate* coactum *peccasse:* non enim peccatur nisi *voluntate,* et voluntas ita libera est ut *cogi* non possit. Nec alia *Gregorii* mens fuit: etsi verba ipsius, illa præsertim, *si nullus sine peccato evadendi aditus pateat,* jam dictis repugnare prima fronte videantur. Non enim loquitur de *duobus* propositis, quorum *utrumque* certo constat esse *peccatum,* qua de re nunc agitur: sed de *duabus rebus,* quarum cum alteram liquido constet esse peccatum, alteram agens aut ex aliquo *conscientiæ errore* falso opinatur esse peccatum cum non sit, aut ex aliquo injecto *scrupulo* vel læva *suspicione* veretur ne forte sit *peccatum;* qui casus alienus est a præsenti instituto.

XVIII. Si quæras, Liceatne *Caio* minus peccatum in se admittere, ut majus peccatum, quod *Titius* alias facturus sit, impediat: puta, liceatne *leve furtum* facere, ne is *homicidium* perpetraret: *Dico quarto,* cum *Augustino,* non licere. *Si quæratur,* [d]inquit ille, *quid duorum potius debuit evitare, qui utrumque non potuit, sed alterutrum potuit: respondeo, suum peccatum potius quam alienum; et levius potius quod suum, quam gravius quod alienum.* Ratio in promptu est: quia nimirum in mea potestate est ne *ipse peccem;* ne *alius peccet, non* est in mea potestate. Sic enim pergit ille, *ego utrumque malum fieri nollem; sed id tantum cavere potui ne fieret, quod erat in mea potestate.* At gravius est *homicidium,* quam *furtum.* Fatetur id *Augustinus,* et respondet, *Pejus est tamen facere furtum, quam pati homicidium.* Et in eandem sententiam alibi, *Quantumlibet distet inter tuum et*

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[c] *οὐδεμία ἀνάγκη τὰ μοχθηρὰ πράττειν.* Aristot. Eth. Eudem. ii. 11. *Nulla est necessitas delinquendi, quibus una est necessitas non delinquendi.* Tertull. de Coron. Milit. c. xi.

[d] [de Mendacio c. 14, Tom. VI. p. 428. c.]

the will do not join in the act, it is not a sin; and the will cannot be compelled.

Gregory does not speak of two acts, both certainly sinful; but of two acts, one certainly a sin, the other deemed to be so by the agent through error of conscience, scruple, or suspicion.

18. *Fourth:* It is inquired, whether it is allowable for Caius to commit a smaller sin to prevent Titius from committing a greater: whether he may commit a small theft that the other may not commit murder.

I answer, with Augustine, he may not: he must avoid his own sin rather than another's. The reason is, that whether I shall sin, is in my own power; whether another shall sin, is not so.

alienum, hoc tamen erit tuum, illud alienum. Res clara, nec cui sit necesse ulterius insistere.

XIX. *Quinto*, si adhuc quæratur, Liceatne saltem alteri, parato *majus malum* facere, suadere minus; ut parato occidere inimicum, suadere ut *mutilet* tantum; quo pertinet *Lothi* ad concives suos oratio. De *Lothi* facto non idem sentiunt omnes. Excusare id factum nil miror [e] *Chrysostomum;* suatim facit: sic enim solet omnes *Patriarcharum lapsus.* Excusat etiam [f] *Ambrosius;* excusant et alii, veteres maxime. [g] *Augustinus* peccasse eum censet, cujus judicium secuti sunt eorum, qui secuti sunt, plerique. Et sane videtur vir sanctus, ex pio erga hospites affectu, dum valde solicitus esset nequa eis injuria aut vis inferretur, animo perturbatiore nonnulla et dixisse et fecisse, quæ non possunt facile excusari. Omisso itaque *Lothi* facto, ut ab *hypothesi* ad quæstionem in *thesi* transeam, licere censeo alteri, ne *graviori* facinore se polluat, *levius peccatum suadere.* Si dicas, qui alteri *suadet peccatum* etsi levius, *suadere* tamen *peccatum;* adeoque eum ad peccandum inducere: quod qui facit, eo ipso reum se facit *peccati alieni;* Respondeo, aliud esse *suadere* alteri peccatum *absolute,* quod quisquis fecerit, indubie peccarit; aliud *suadere* alteri peccatum *conditionaliter,* et ex *ea suppositione,* quod non possit aliter *gravius peccatum* evitari. Quo supposito, non tam censendus est, eo consilio alterum *induxisse ad peccatum* illud levius, quam *abduxisse a peccato* majore et atrociore. Non enim *suadet* eum ad peccatum, *qua peccatum* est, sed *qua minus peccatum* est, et majoris impeditivum. Si porro urgeas, Si mihi liceat *suadere* alteri electionem *minoris*

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[e] [in Genes. xix. Homil. xliii, Opp. Tom. I. p. 441. A.]

[f] [de Abram. i. 6; et de Offic. ii. 21.]

[g] [contra Mendac. c. ix. n. 20, Opp. Tom. VI. p. 457. B.]

19. *Fifth:* Is it allowable, when a man is bent upon a greater sin to persuade him to a less; as when a man is bent upon killing his adversary, to persuade him to mutilate him only; to which case belongs Lot's proposal?

As to Lot, Chrysostom and Ambrose excuse him: Augustine and more recent writers condemn him: our author says, that Lot in his perturbation said and did what cannot easily be excused.

As to the general question, our author pronounces that it is allowable to persuade a man to a smaller sin to prevent his committing a greater.

It will be objected, that so doing, we still persuade the man to sin.

We answer, We do not do this absolutely, but conditionally, on the supposition that the greater sin cannot otherwise be avoided. On this

peccati; cur non et illi liceat, etiam me *non suadente,* sponte sua id ipsum peccatum *eligere?* imo cur non et mihi ipsi liceat id tuto *facere,* quod recte *suadeam* alteri? id est, e *duobus propositis peccatis* eligere id quod *minus* est? Aut cur licere putandum est e *tribus* primum, neutrum autem reliquorum: quum videatur esse omnium *trium* par omnino ratio? Eandem esse *trium* rationem, id vero constanter pernego: quum sit manifestissima inter hæc et illud discriminis ratio. Quod nec illi liceat *sponte sua,* nec mihi *sponte mea,* ad majus peccatum vitandum eligere minus; id propterea fit, quia cum sit in *potestate* utriusque nostrum (*respective*) *utrumque vitare,* tenemur uterque *neutrum eligere:* ceterum quod mihi liceat alteri suadere *minus peccatum,* ut evitetur *majus,* ex eo contingit, quod non sit in mea suadentis *potestate* (id enim jam supponimus,) impedire *utrumque.* Danda certe mihi est opera, quantum in me est, ut *impediatur utrumque:* sed cum videam me id efficere non posse quod maxime *vellem et cupio,* facio saltem quod *possum et debeo,* suadendo *minus peccatum* ut impediam *majus.*

XX. Ex iis quæ hactenus disputata sunt facile intelligitur, quæ sit mens illius dicti, *E malis minimum,* et quis ejus usus in omni deliberatione humana; ad quæcunque tandem *mala* applicetur, sive *Culpæ,* sive *Pœnæ.* Tenet enim, idque universaliter et in utroque malorum genere, quoties eo res devenerunt (ut recte explicat statum quæstionis *Augustinus*) ut e *duobus malis* sit in nostra potestate *alterutrum* evitare, non

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supposition, we do not so much persuade the smaller sin, as dissuade the larger. We do not persuade him to sin, but to sin less.

It may be objected, If I may persuade the man to the smaller sin, why may he not choose the smaller sin himself, without my persuading? Or why may I not allowably do what I may thus persuade another to do? Of these three things, why is the first allowable, the other two not, when all the three seem to be on the same footing?

We answer, All the three are not on the same footing. He may not of his own free will, nor may I, of mine, choose a smaller sin to avoid a larger, because each of us has it in his power to avoid both sins. But I may persuade another to choose the less sin in order to avoid the greater, because it is not in my power to prevent both. I must try to prevent both; but if I cannot do what I would this way, I do what I ought in persuading the less to prevent the greater sin.

20. And thus we see the meaning of the maxim, To choose the least of evils, whether applied to evils of sin or of suffering. The maxim is true, whenever it is in our power to avoid one of the evils, and is not in our power to avoid both.

sit in nostra potestate vitare *utrumque*. Omne enim *malum*, quatenus *malum*, viro pio et prudenti vitandum est, quantum in ipso est: ergo *duobus* cujuscunque generis *malis* propositis, *utrumque* si vitare potest, debet; si non potest, eligendum est ei quod *minus* est. Non tamen sequitur eligendum esse de *duobus peccatis* id quod *minus* est, quia *utrumque* vitari posse jam ante demonstratum est. Et hæc de *Corollario secundo.*

XXI. Sequitur ex principali *Conclusione*, *tertio;* nihilo minus errare eos, fortasse et gravius, qui ut *clavum clavo*, sic *malum malo* pellendum existimant: ut verbi gratia, *Superstitionem* Sacrilegio, *Tyrannidem* Seditione, etc. Qui fere error est eorum hominum, qui sibi tum demum vel maxime sapere videntur, cum, ut hortulani solent *plantas* hac nimium inclinantes, ut erectiores insurgant, illac *inflectere*, ab altero *extremorum* non se satis cavisse arbitrantur, nisi in alterum improvide ruerint. Sic

[h] *Dum vitant stulti vitia, in contraria currunt;*

et dum vitant *Charybdim*, in *Scyllam* incidunt. Sed ut aliquem locum habeat in medendis corporum affectibus *aphorismus* ille, (quem tamen non usquequaque comprobant medicorum filii,) *Contraria contrariis curari, extrema extremis:* in moribus tamen corrigendis, et in reformandis *Ecclesiarum et Rerumpublicarum* corruptelis, affert plerumque pro remedio certam perniciem. Grave est illud *Sophoclis* apud [i] Stobæum,

Ἐνταῦθα μέντοι πάντα τἀνθρώπων νοσεῖ,
Κακοῖς ὅτ' ἂν θέλωσιν ἰᾶσθαι κακά.

Hinc pessum eunt mortalium res indies,
Rebus mederi quod velint malis mala.

Et ejusdem in [k] Ajace aliud:

Μὴ κακὸν κακῷ διδοὺς
Ἄκος, πλέον τὸ πῆμα τῆς ἄτης τίθει.

hoc est: *addens pharmacum malum malo,*
Ne contrahas tibi majus infortunium.

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h Horat. Satir. [Lib. I. ii. 24.]
i λογ. β'. [Florileg. T. IV. 37.]
k [v. 362, sq. ed. Dindorf.]

21. Third Corollary. Those err who would drive out one evil by another, as nail drives out nail; Superstition, for instance, by Sacrilege; Tyranny by Sedition. This errour is committed by men running from one extreme to another; a great mistake.

XXII. At si alias publicis malis remedium afferri non possit, nisi aliquæ *piæ fraudes* adhibeantur, *legesque et jura* violentur, annon præstiterit aliquantisper ista fieri, quam permittere Rempublicam *ἀνίατα νοσεῖν*? Lego quidem in sacra historia ita olim sensisse Pontificem Hierosolymitanum *Caiapham*, qui in Senatu suæ gentis, posthabita justitiæ ratione, *Jesum* quamvis [1]nullius criminis reum morte tamen afficiendum censuit, quod sic fieri *expediret*. Memini me alicubi olim legisse, *Romanorum Pontificum* nescio quem, in Cardinalium conclavi de præsentibus negotiis disceptantem, quum submonuisset quidam e purpuratis, id quod propositum esset consilium parum sibi *justum* videri, respondisse, *Licet non posset fieri per viam justitiæ, oportere tamen fieri per viam expedientiæ.* Nimirum isthoc est sapere! Hæc est eorum hominum quos *Politicos* vocant, ex *Jesuitarum* ni fallor officinis deprompta, Theologia: *Omnia metiri ex commodo Sanctæ matris Ecclesiæ;* Sacrosancta Dei eloquia qua lubet inflectere, *nasi* ad instar *cerei* torquere, distorquere, invita cogere in rem suam; Et, ut Lacon ille *honestum esse* dixit *quicquid Spartæ esset utile*, nil turpe ducere, aut refugiendum, quod *Spartæ illi* quam nacti sunt *ornandæ* quoquo modo inservire posse arbitrentur. Verum apage procul e *scholis*, e *suggestis*, e *pectoribus* nostris hanc insanam *Theologiam*. Longe nos aliter

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[1] Joh. xi. 50.

22. It may be inquired whether, if public evils cannot be remedied without using pious frauds, and transgressing laws and rights, is it not better to use such remedies than to leave the state under disease without remedy? So advised Caiaphas, John xi. 50. So also one of the popes, when, in the council of Cardinals, one remarked that what was proposed did not seem to him just, is reported to have said that though it could not be done in the way of justice, it must be done in the way of expedience. [These illustrations are also used in Sanderson's twelfth sermon *ad Aulam.*]

This is the theology of Politicians, from the shop of the Jesuits: to measure every thing by the advantage of Holy Mother Church; to twist the Scripture like a nose of wax; to say, as the Lacedemonian said, that every thing was fair, which was good for Sparta.

We reject such theology. We have learnt from the Apostles not to ask the question, *Is it expedient?* till we are clear as to the other question, *Is it lawful?* Even the heathen advanced so far in morality, for they judged that nothing can be useful which is not also honourable.

instituerunt Sancti Christi [m]*Apostoli,* qui illi quæstioni, *Expediat necne,* non ante locum concesserunt, quam de altera quæstione, *Liceat necne,* constaret. Quin et aliter senserunt saniores *Ethnici,* qui quoties pugnare videtur *cum utilitate honestas,* sic litem semper dirimunt, ut pronuncient *utile* non esse quod non sit idem *honestum.*

XXIII. Ne longe abeam, *Paulus* hoc ipso commate omnino negat *facienda esse mala, ut eveniant bona:* quibus verbis quid dici potuit ad firmandam nostram *Conclusionem* aut apertius, aut efficacius? Audivi tamen hisce auribus, qui cum istis ipsis Apostoli verbis premerentur, nec aliter quæ defensa cuperent tueri possent, adhibita distinctione dicerent, nulli quidem *privato viro* fas esse pro suo arbitrio *malum facere ut inde proveniat bonum,* et hoc solum voluisse *Paulum* his verbis prohibere; licere tamen, hoc non obstante, ex communi gentis consilio abs his, quorum interest *ne quid Respublica detrimenti capiat,* id fieri, si sic postulet *publica necessitas* et *populi Salus.* Saluti populi quantum sit deferendum, dabitur fortassis posthac (si Deus voluerit) examinandi locus. Animadvertendum est interim,
Primo gratis hæc omnia dici, nec occurrere quicquam in tota 1
hac disputatione *Paulina,* quo nitatur illa distinctio: *Deinde,* 2
si scopum et vim argumentationis *Paulinæ* hoc in loco attendamus, excludi prorsus omnes istiusmodi limitationes et commenta hominum nugatorum. Occurrit enim *Apostolus* objectioni, de promovenda peccatis hominum *gloria Dei:* negat

[m] 1 Cor. x. 23.

23. Finally, St Paul says that we are not to do evil that good may come. Yet I have heard, Sanderson says, with these ears, men who, when pressed by these words of the Apostle, defended themselves by a distinction; that it was not allowable for a private person, of his own choice, to do evil that good might come; and that this was all that St Paul meant; but that notwithstanding this, those who have to preserve the State from harm, may, by the common agreement of the nation, if public necessity and the welfare of the people require, deviate from such a rule.

What consideration is to be had of the welfare of the people we shall hereafter consider: in the meantime we remark,

First, that all this is gratuitously said, and that there is no ground for any such distinction in the whole Pauline disputation:

Second, that if we attend to the scope and force of the Pauline argumentation, all such limitations and comments are excluded, as

vel eo etiam fine *facienda mala*, ut illustrior reddatur *Dei gloria*. Sequitur ergo a fortiori, non esse *facienda mala*, ob aliquem finem qui sit inferior *gloria Dei*. Cum igitur cuilibet *bono humano*, privato vel publico, infinities præponenda sit *Dei gloria;* nec liceat tamen vel ejus *gloriæ intuitu* malum facere: certe non licebit cuiquam aut homini singulari aut toti Communitati, in remedium cujuscunque *mali publici* vel *privati*, aut ipsi malum facere, aut alteri faciendum commendare.

XXIV. Recogitemus obsecro, Auditores, ista apud nos, idque serio: et quo pejores dies sunt, quo plures tentationum laquei, et impetus fortiores, eo ἀκριβέστερον ambulemus, et majore circumspectione caveamus gressibus nostris. Ne a recto illo et angusto tramite mandatorum Dei patiamur nos ullis Satanæ machinationibùs, aut mundi carnisve illecebris ad dextram sinistramve vel tantillum abduci: Memores, quæ scientes prudentes fecerimus *mala*, nullam, vel apud *Deum judicem* vel apud *testem Conscientiam*, habitura esse in illo die excusationem. Et de *bonæ Intentionis* prætextu hactenus. Quæ de hominum *Exemplis et Placitis*, quod ad regimen Conscientiæ attinet, supersunt dicenda, pergam (Deo volente) exequi proxima futura prælectione.

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being mere trifling: for the Apostle says we may not do evil, not even to make the glory of God more manifest. It follows therefore, *a fortiori*, that we may not do evil for an end less than the glory of God. And as the glory of God is to be infinitely preferred to any other end, public or private, it cannot be lawful either for an individual or a community, for the remedy of any evil, public or private, to do evil; nor to persuade others to do it.

24. We must be more careful of our conduct on account of the evil times; knowing that the evil that we do, willing and knowing, will have no excuse with God our Judge, or Conscience our Witness.

And so much of Good Intention: in the next lecture we shall examine the force of Examples, and the weight of Opinions.

PRÆLECTIO TERTIA.

IN QUA OSTENDITUR NON ESSE AD CONSCIENTIÆ SECURITATEM SATIS PRÆSIDII IN VIRORUM PIORUM *EXEMPLIS* AUT PERITORUM *JUDICIO*.

GAL. II. 13.

Καὶ συνυπεκρίθησαν αὐτῷ καὶ οἱ λοιποὶ Ἰουδαῖοι· ὥστε καὶ Βαρνάβας συναπήχθη αὐτῶν τῇ ὑποκρίσει.

Ac simulabant una cum eo reliqui etiam Judæi, adeo ut Barnabas simul abduceretur eorum simulatione.

I. CUM mihi propositum esset propriam et adæquatam *Conscientiæ Regulam*, quæ nobis certa esset et tuta *vivendi lex*, investigare: pernecessarium duxi ante ostendere, quam gravi et periculoso in errore versentur ii, qui in rebus agendis *Conscientiæ* suæ securitati satis prospectum putant, si aut *boni finis* intentione, aut Sancti alicujus *exemplo*, aut viri eruditione pietateque insignis *judicio et auctoritate*, se factaque sua quoquo modo tueri poterunt. Et quidem ad *Conscientiæ* fructum, fiduciamque boni operis, cetera ni pariter adfuerint, in nuda *bona intentione* quam parum sit præsidii, arbitror esse a me superiore prælectione satis demonstratum evictumque multis rationibus, *non esse facienda mala ut eveniant bona.* Superest hodie ut itidem ostendam, non debere esse cujusquam hominis vel *exemplum* vel *judicium* tantæ apud nos auctoritatis, ut in eorum alterutro secure acquiescat *Conscientia:* neque ex eo solo debite concludi posse, aut *de præterito* omne id *recte factum esse,* aut *de futuro* omne id simpliciter *fieri licere,* quod alius quisquam quantavis *doctrina* vel *sanctitate* præditus, aut ipse *fecerit,* aut licite fieri posse *judicaverit.*

II. Porro quam non sit tutum ad *aliorum exemplar* vitam nostram actionesque instituere, nec sufficiat ad *con-*

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1. It is to be shewn in this lecture that neither the Example of any man, nor the Judgment of any man, can be security for our Conscience as to what we have done or have to do.

2. This appears, *First,* from the text, Gal. ii. 13. St Peter, who for some time had lived among the Christians who were at Antioch,

scientiæ securitatem, si quod facimus aut facturi sumus, id ipsum a viro aliquo pio ante nos factum defendamus; e textus propositi verbis luculentissimo argumento confirmari potest: maxime si dicti occasionem ex rei gestæ historia paulo altius repetamus. *Petrus Apostolus,* inter Gentiles ad Christi fidem conversos, qui *legis Mosaicæ* conscientia non tenebantur, *Antiochiæ* degens, egit cum eis libera convivia, et appositos *quoscunque cibos,* non minus *prohibitos* populo Judaico quam *concessos,* pro ea quam in Christo habuit *libertate,* indiscriminatim comedit. Ast ubi *Hierosolyma Antiochiam* venissent de gente Hebræa quidam *Christiani,* sive erant ii ficti illi fratres, παρείσακτοι ψευδάδελφοι, quorum *versu quarto* istius capitis meminit, qui velut a *Jacobo* missi, sed revera *clam subingressi* fuerant ad explorandam *Pauli* aliorumque *Christianorum* libertatem, (ut nonnullis visum); sive potius (ut alii existimant, et fortasse rectius) *infirmi fratres,* a *Jacobo* quidem missi, sed de legalium rituum cessatione nondum satis plene edocti: *Petrus,* ut apud eos *gratiam* iniret, vel saltem ipsorum *offensionem* reveritus, abstinuit protinus a *Gentilium* mensis et societate, et a *cibis* Mosaica lege *prohibitis.* Cujus inducti exemplo, *Judæi* etiam *Antiocheni,* qui *Pauli* et sociorum concionibus docti erant *Christianam libertatem* aliquanto melius quam *Hierosolymitani* illi, et de abolita *lege Ceremoniarum* rectius senserant, imbecilles tamen adhuc et ipsi, et ritibus quibus diu assueverant addictiores, facile se passi sunt a communione fratrum suorum fidelium *Gentilium* segregari, non sine aliqua (ut verisimile est) levi saltem suspicione, *Petrum* scilicet *Apostolorum Coryphæum* de his rebus rectius sentire, et se fortean a *Paulo* grata sed inani libertatis specie lactatos hactenus fuisse et deceptos. Quin et ipse etiam *Barnabas,* quod magis mirere, (infirmiores enim ad *lapidem offendiculi* impingere, non est aut novum aut insolens), qui *Pauli*

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holding free intercourse with those of them who were Gentiles, afterwards separated himself from them, fearing some Jewish Christians who came thither from Jerusalem; (whether those were false brethren, as some suppose, or, as others more rightly think, weak brethren, not instructed that the ritual law had ceased to bind men). Paul, on this, resisted Peter, and withstood him to the face; but Barnabas was carried away by the authority of this dissimulation, though before he had been a fellow-preacher of Christian liberty with St Paul.

assiduus in itinere comes et collega fuerat, qui *Christianæ libertatis* doctrinam adversus Judæos constanter asseruerat, tanti Apostoli auctoritate permotus, in eandem *simulationis societatem* concessit, non sine magno fidelium qui ex *Gentibus* erant scandalo.

III. Reprehensum a se hoc nomine *Petrum*, idque graviter et palam et merito, narrat hic *Paulus*. Non solum, quod ipse cum tot fratrum scandalo, ex nimio sive *placendi* studio sive *offensionis* metu, *Judaismo* faventiorem se quam par erat simularet: sed quod et alios suo *exemplo* in ejusdem hypocriseos participium pellexerat, eodemque *exemplo* pergeret credentes etiam e Gentibus *ad Judaizandum*, reluctante *conscientia* et quasi invitos, *cogere*. Non sum nescius [a] *Hieronymum*, post alios quos ille citat sententiæ suæ auctores, longe diversam afferre ab ea quam nunc attuli *Paulinæ reprehensionis* interpretationem: scilicet, non serio et uti videbatur, sed κατ᾽ οἰκονομίαν et *ex composito* inter duos summos Apostolos, Ecclesiæ utilitate sic postulante, rem omnem gestam. Nimirum hoc voluit, *simulationem Petri* ad retinendos *Judæorum* animos fuisse necessariam: quæ tamen ne vergeret nimis in *Gentium* periculum, necessariam item fuisse et *simulatoriam* ejusdem a *Paulo reprehensionem;* qua et *Judæorum error* de valida adhuc legis rituum obligatione sic corrigeretur, et eadem interim opera, ne quod inde creetur *Gentilibus Christianis* scandali periculum, caveretur. Ex amborum utique conjuncta *simulatione* id agi, ut tam *Judæi* quam *Gentes* in Christi fide, quam non ita pridem amplexi essent, hac quasi *pia fraude* facilius retinerentur. Illud itaque, κατὰ πρόσωπον αὐτῷ ἀντέστην, sic interpretatur, accommode in illam quam tuetur sententiam (ut solet

[a] Comment. in Epist. ad Galatas [Lib. I. cap. ii, Opp. Tom. IV. p. 243, sqq.; ad Augustin. Ep. lxxiv.]

3. St Paul relates (v. 11) that he *withstood St Peter to the face, because he was to be blamed;* and gives (v. 14—21) the arguments which he used.

Jerome holds that this was done in the way of management, for the advantage of the Church; Peter's simulation being useful to please the Jews, and Paul's rebuke being also simulated to gratify the Gentiles; and thus, both parties were retained in the Church by a pious fraud.

He maintains also that instead of the words κατὰ πρόσωπον meaning *face to face*, they mean *in appearance*, as 2 Cor. x. 1, *I Paul... who* in presence *am base among you.*

is præ reliquis Patribus, δουλεύειν τῇ ὑποθέσει), ut κατὰ πρόσωπον ibi non *palam* et *in faciem*, i. e. coram populo et aperte significet, sed *specie tenus* et secundum externam apparentiam, quo significatu κατὰ πρόσωπον alibi etiam usurpari constat, ut 2 *Cor.* x. 7.

IV. Non placuit *Hieronymi* sententia *Augustino*, qui negat ex compacto quidquam hic actum fuisse, sed *Paulum* sincere et ex animo intempestivæ huic συγκαταβάσει semet opposuisse. Quare *Hieronymum* ejus erroris [b] per Epistolam amice admonendum censuit: unde quum ille *paulo* commotior in eadem sententia perstaret, agitari cœpta est quæstio inter ipsos missis ultro citroque [c]*Epistolis*, magno utrinque (ut par erat in tantorum ingeniorum concertatione) acumine et rationum momentis. Stetit tandem plerorumque judicio ab *Augustino* victoria, quod erat adductorum ab eo argumentorum pondus: ita ut ex illo tempore paucissimis pedibus itum sit in alteram sententiam. In quibus tamen mirarer si non esset [d]*Baronius*. Qui (cautus nequid detrimenti caperent res Romanæ, ne labasceret *Jovis sui Capitolini* aut *infallibilitas*, si in *Petrum* cudi posset ulla erroris vel temerarii judicii fabecula; aut *Œcumenica potestas*, siquis mortalium ausus esset *Petrum* utcunque commeritum reprehendere, vel hiscere contra, dicendo, *Domine cur ita facis?*) nullum non movet lapidem, ut rejectam passim *Hieronymi* sententiam, et toto pene orbe exulantem, postliminio quasi revocatam civitate donaret. Sed profecto is est *Baronius*, ut se passim prodat uni partium studio deditum; quem

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[b] Apud Hieron. Epist. xcvii. etc.

[c] [Ap. Hieron. Epist. lxxxvi. et seqq. usque xcvii; ap. Augustin. Ep. viii. et seqq. usque xix.]

[d] Annal. Ecclesiast. ad Ann. 51. [cap. xxxvi. seqq.]

4. Augustine condemned the opinion of Jerome, and held that Paul was sincerely opposed to this accommodation: hence arose an epistolary controversy between the two; in which, according to the judgment of most, the victory remained with Augustine.

Baronius, however, upholds the opinion of Jerome, both on account of the Pope's Infallibility, which would be damaged if Peter could err; and on account of the Œcumenical Power of the Church, which would be impugned if Peter could be called to account by another.

But Baronius is a party writer, and makes all his work subservient to the interest of the papacy.

It is certain that κατὰ πρόσωπον means *face to face*, as Acts xxv. 16, *that he which is accused* have *the accusers* face to face.

palam est in spisso illo et immensæ diligentiæ *Annalium* opere, id sibi negoti solum dari credidisse, *Pontifici* ut gratificaretur suo, et omnium *monimentorum* fidem et auctoritatem, omnium opinionum et *testimoniorum* momenta, ex unius *Romanæ sedis* dignitate et utilitate metiretur. Atqui *Paulus*, (ut illuc unde paulum recessi redeam), Coapostolum suum *Petrum* κατὰ πρόσωπον, i. e. *præsens præsentem*, (ut ea locutio, *Act.* xxv. 16, et alibi accipitur) audacter et palam ἔμπροσθεν πάντων, *importunæ simulationis* jure optimo redarguit: idque eo maxime nomine, quod facti sui *exemplo* Barnabam et ex Antiochia Judæos in errorem induxisset, et *Gentibus* fidem Christianam recens amplexis, in *Evangelicæ libertatis* discrimen, grave *scandalum* præbuisset.

V. Hæc a me pluribus eo libentius commemorata sunt, cum ut loco aliquantum obscuro et jam olim controverso facem aliquam præferrem; tum etiam, ut evidentior esset ejus argumenti vis, quod ad *thesin nostram* confirmandam ex hac *Apostoli* diatriba deducitur. Siquidem *Paulus* non *Petrum* solum qui *exemplo* suo præiverat, sed et *Barnabam* etiam ceterosque qui *Petri exemplum* secuti in eandem simulationem consenserant, notandos censuit ὡς οὐκ ὀρθοποδοῦντας, quod *minus recto pede*, nec ut Christianæ *veritati* et *simplicitati* congruebat, incederent. Omnino ut constet, apud *Paulum* judicem parum profuturum fuisse *Barnabæ* vacillanti, et inter *Judaismum* et *Christianismum* quasi claudicanti, in simulationis suæ patrocinium, *Petri*, summi quantumvis inter Apostolos nominis, *exemplum* advocasse. Esto, dignior sit acri reprehensione *Petrus*, quod *suo exemplo* alteri nocuerit: at nihilo propterea excusatior *Barnabas*, quod *alieno exemplo* peccaverit. Hæc de *primo* nostro *argumento* ex textu hoc Paulino.

VI. *Secundum Argumentum* sumitur a difficultate judi-

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5. The application of the case is this: Paul condemned not only Peter who set the example, but Barnabas and the others who followed it, as (v. 14) *not walking uprightly*. He, as a judge, would not allow the authority of Peter to be of any avail to justify Barnabas, in his vacillation between Judaism and Christianity.

6. *Second Argument.* All actions of pious men are not to be imitated; and hence it is difficult to know which may rightly be imitated.

For either an action of a pious man may not be right in him; or, though right in him, it may not be rightly imitable by us.

First, an action of a pious man may not be a right action; for God

candi, quum non sint omnia piorum facta *imitanda,* quænam ex iis sint in *exemplum* trahenda, et quæ non: idque ob *duplicem* quæ est in eis *incertitudinem.* Utrumque enim fieri potest: ut quod a viro pio factum est, non fuerit *recte factum;* aut quod est ab eo recte factum, non tamen sit nobis *imitandum.* Imprimis illud utrumque certum est, et quæ constat esse perperam facta non esse *imitanda;* et suos fuisse viris vel sanctissimis *nævos et lapsus.* Quos et sapientissimus Deus permisit aliquoties in gravissima peccata labi, *adulteria, homicidia, idololatriam, fidei abnegationem,* etc., ut se *homines* esse cogitarent; discerent ex sensu suo *alienis infirmitatibus compati* et ignoscere; adversus *tentationes* non suis viribus fiderent, sed ab ipsius *auxilio* toti penderent; sicubi validos *tentationum* impulsus sustinuissent invicti, inconcussi, illæsi, id omne ipsius *providentiæ* et *gratiæ* acceptum ferrent: ita eorum *lapsus* aliquot *fœdiores* in ipsis Sacrorum voluminum tabulis sapientissimo consilio perscribi voluit, ut extarent in omne ævum ex una parte *humanæ fragilitatis* et inconstantiæ, ex altera *divinæ bonitatis* et clementiæ illustria nec peritura *monumenta.*

VII. Dices fortasse non esse ea *Sanctorum exempla* sequenda, quæ ipse Dei spiritus in sacris literis, velut virgula censoria, ut perperam facta notavit. Quis enim sanæ mentis sibi aut *Davidis adulterium,* aut *Petri abnegationem,* imitanda proponeret? Videri tamen tuto posse ab ejusmodi factis *exempla* sumi, quæ in Scripturis ita narrantur, ut nullam adjectam habeant *vituperationem,* vel criminis aut culpæ *notam.* Respondeo, nec hoc esse concedendum. Multa enim hominum *facta* in Scripturis, ut in aliis passim historiis,

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permits pious men to fall into grievous sin, that they may be ready to forgive others, and may learn to seek, from God, help against temptation. The Scriptures are a record of human frailty and of divine goodness.

7. It may be replied, that though those examples of Saints are not to be imitated, which are mentioned in Scripture and condemned there; as David's adultery, Peter's denial of his Master; yet that such examples as are not condemned may be followed.

But this we deny. For some facts are stated historically and barely, without praise or blame; as Lot's offer with regard to his daughters, Joseph's swearing by the life of Pharaoh, Jacob obtaining his father's blessing by fraud. To take such acts as examples, would be most dangerous.

nude tantum et *historice narrantur* prout gesta sunt, quæ a narrantibus nec disertim *laudantur* nec *vituperantur:* quorum tamen nonnulla indubie constat *injusta* fuisse, aut *inhonesta,* et a viri boni officio aliena; et de multis aliis non immerito dubitari potest fuerintne *recte facta* vel secus, de quibus disputare solent probabiliter et libere in utramque partem interpretes. Qualia sunt illa [e] *Lothi,* impuris civibus filiarum suarum stuprum offerentis; [f] *Josephi* per vitam Pharaonis, ut putatur, jurantis; [g] *Jacobi* Esavo fratri paternam benedictionem astu præripientis; aliaque id genus compluria. Quæ siqui eorum *exemplo* sibi etiam licere putent hoc solo nomine, quod ea a viris piis *facta* legant, *damnata* non legant: næ illi, dum *incertissimæ legi* conscientias suas subjiciunt, sese interim *certissimo* errandi peccandique *periculo* objiciunt.

VIII. Atqui ea saltem *Exempla* nobis, quæ in sacris literis diserte *laudantur,* secure sequi licebit, inquies. Imo ne id quidem simpliciter concesserim. Sed quod ad hanc rem attinet, *Dico primo,* Quæcunque hominum *facta in* sacris literis aperte *damnantur* ut vitiosa, ea simpliciter esse fugienda: potior enim est vis et usus *exemplorum malorum,* ut ab illis *negative* arguatur, quam bonorum arguendo ab illis *affirmative.* Quo arguendi genere utitur Apostolus noster, 1 *Cor.* x. 6, etc., ubi propositis ex veteris instrumenti historia *peccatorum* diversi generis *exemplis,* ut et *judiciorum Dei* in legis suæ prævaricatores, monet ut ea omnes intueamur velut *typos* et *exemplaria,* non quæ imitemur, sed quæ [h] vitemus,—εἰς τὸ μὴ εἶναι ἡμᾶς ἐπιθυμητὰς κακῶν, ne scilicet concupiscamus mala, *sicut quidam ex illis concupiverunt,* neque *idola colamus,* neque *scortemur,* neque

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[e] Gen. xix. 8. [f] Ibid. xlii. 15, 16. [g] Ibid. xxvii. 24.

[h] *Ut fugerem exemplis vitiorum quæque notando.*
Horat. Lib. I. Sat. IV. [v. 106.]

8. It may be urged again, that at least those examples which are praised in Scripture may be followed.

But this cannot be absolutely conceded. First: Whatever indeed is condemned in Scripture as bad, is to be avoided. We may argue more powerfully negatively from bad examples, than affirmatively from good ones.

Such arguments we have, used by St Paul, 1 Cor. x. 6, *These things were our examples, to the intent we should* NOT, &c.

Christum *tentemus*, neque *murmuremus* in adversis, quemadmodum illos fecisse legimus.

——— [i]*Hoc quidam non belle; nunquid ego illi*
Imprudens olim faciam simile?

IX. *Dico secundo*, quæ in Scripturis facta aperte *laudantur*, atque ita laudantur ut nobis quasi *imitanda* proponi videantur, non esse tamen omnia mox rapienda in *exemplum*, ita ut totum aggregatum sive *integram actionem* prout ab *archetypo* gesta est, nobis commendatam arbitremur. Sed delectu opus est, et cauto; ut quæ *laudantur*, ea tantum ex parte *imitemur*, ex qua *laudantur*. Cujus cautelæ hæc ratio est, quia solet Deus interdum, pro immensa sua bonitate in *actione mixta*, id solum quod in ea *bonum* est, intueri et comprobare; id quod *vitiosum* est, quasi dissimulando præterire. Ut in parabola, *Luc.* xvi. 8, *Laudavit Dominus villicum iniquitatis, quod prudenter egisset*, etsi fide parum integra. *Imitanda* ergo nobis proponitur villici illius *prudentia*, non *injustitia*. Et in [k]*obstetricum Ægyptiarum* laudato exemplo, recens editos *Israelitidum* partus servantium, regiique mandati contemptum mendacio excusantium, non sunt confundenda, cum *humanitate* et *pietate mendacium*, sed caute separanda: quorum hoc in vitio fuit, nec *imitandum*; illis solis data *laus* est a Deo, et a nobis debita *imitatio*.

X. *Dico tertio*, in Scripturis laudari etiam *actus heroum extraordinarios*, quos illi peculiari motu et afflatu *Spiritus Sancti* excitati, quasi ex *peculiari mandato* ediderunt, *præter legem communem*: qui tamen non sunt ab aliis *imitandi*. Ejus generis erat celebre illud factum *Phinehezi*, quo a Deo

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[i] Horat. ibid. [v. 136, seq.] [k] [Augustin. c. Mendac. c. xv.]

9. But secondly: the actions which are praised in Scripture and proposed for imitation, are not necessarily to be imitated in the aggregate: we must distinguish, and imitate them only as to that part which is praised. For God sometimes in regarding a mixed action, praises the good part, and passes over the bad. As when *the lord praised the unjust steward*, Luke xvi. 8 (namely his lord, not the Lord God), his prudence is praised, not his injustice. And when the Egyptian midwives (Exod. i. 19) gave a false account to the king, and *God dealt well with them*, it was their humanity and piety which was acceptable, not their falsehood.

10. And thirdly: some actions praised in Scripture are extraordinary and heroical actions, performed under the impulse of the Holy

Opt. Max. et *laudem* meruit et *præmium:* qui cum esset vir privatus, nulla legitima auctoritate publica præditus, impudicum tamen scortantium par ἐπαυτοφώρῳ deprehensum spiculo transfixit, *Num.* xxv. 8. Ut et alterum illud *Eliæ prophetæ,* qui, devocato cœlitus *igne,* missos se accersitum milites absumpsit, 2 *Reg.* i. 10, etc. Quod ejus factum discipuli Christi *Jacobus et Johannes* imitari cupientes, cum præceptorem suum ea de re consuluissent; temerarium ipsorum consilium ita non comprobavit, ut *objurgantis* speciem indueret, retuditque eorum impetus acri castigatione: [1] *Nescitis,* inquit, *cujus spiritus estis.* Quasi diceret, Quin compescite ferocientis animi fervidiores impetus, et intra vocationis vestræ limites vosmet continete. Non siquid olim severius fecerit *Elias,* id ipsum vobis item faciendum existimate. Quod ab eo factum est, dictante et suggerente intus *Spiritu Dei extraordinario* factum est: cujus dictamen fuit ei peculiaris illius *mandati* instar, quod *Abrahæ* datum est de mactando filio *Isaaco.* At non est vestrum, quos nondum *Dei Spiritus* ad tale facinus perpetrandum *extra ordinem* vocavit, simile aliquid attentare.

XI. Quum itaque nec semper certum sit, id quod a viro pio *factum* legitur, *laudari* debere, nec si quid *laudatum* fuerit, id continuo *imitandum* esse: ad conscientiarum nostrarum securitatem multo conducibilius est, actus nostros *ad Legis regulam* quæ certa est, quam *ad incerta hominum*

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[1] Luc. ix. 55.

Spirit, or by special command, beyond the common moral law; and as such, not to be imitated: as the act of Phineas, Num. xxv. 8, and the act of Elijah, 2 Kings i. 10, where he called down fire from heaven and destroyed the soldiers who were sent to him. When John and James wished to imitate this latter example, and asked Christ if they should do so (Luke ix. 54), he said, *Ye know not what spirit ye are of:* that is: Control your anger: if Elijah formerly inflicted severities on adversaries, do not think that you are to do the same: he acted under the extraordinary influence of the Spirit of God; as Abraham did when he offered up Isaac. It is not for you, who are not so called to act, to attempt the like.

11. Since then with regard to the act of a pious man, we cannot always be certain that it ought to be praised, and even if it be praised, cannot be certain that it may be imitated, we shall consult the safety of our conscience much better by conforming to the moral Rule than to the examples of men. And so Augustine judges. See the text.

exempla exigere et conformare. Recte [m] *Augustinus, Hæc quæ in Scripturis Sanctis legimus, non ideo quia facta credimus, etiam facienda credamus: ne violemus præcepta, dum passim sectamur exempla.* Ubi post alia quædam eodem pertinentia, ita tandem concludit; *Unde constat quod non omnia quæ a Sanctis et justis viris legimus facta, transferre debemus ad mores.* Atque hactenus de *secundo* nostro *argumento*, a difficultate judicandi de piorum *exemplis*, propter *incertitudinem* quæ in ipsis est.

XII. Sequitur *tertium*, a difficultate rite *applicandi* aliorum *exempla* ad res et actiones nostras, propter *incertitudinem circumstantiarum.* Quæ cum sint infinitæ varietatis, infinities etiam variant humanarum actionum qualitates. Quod est *in thesi*, i. e. de suo genere *licitum et liberum*, atque etiam ita manet *in hypothesi* (manentibus scilicet iisdem *circumstantiis*) *licitum et liberum*, (*licitum* autem dico, quod sine peccato *fieri*, *liberum*, quod sine peccato *omitti*, potest;) idipsum addita, dempta, aut quovis modo immutata vel una qualibet *circumstantia* reddi potest e licito *illicitum*, aut e libero *necessarium.* Ut quotidie usuvenire cernimus in foro contentioso, cum inter partes litigantes causæ aguntur; Ubi ab unius partis advocato citantur e libris in causæ suæ subsidium rerum judicatarum *præcedentia* (ut vocant) *exempla:* responderi solet ab alterius partis advocato, non esse eandem in utraque causa *juris rationem*, variare *circumstantias*, inde immutari *casum*, nec quæ olim judicata citantur ad præsentem litem pertinere. Quod si

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[m] contra Mendacium, cap. ix.

12. *Third Argument:* it is difficult to apply the examples of others to our own case, on account of the uncertainty of the circumstances. What in the general case may be lawfully done or freely left undone, may, by the addition or subtraction of some circumstance, become unlawful or necessary.

This happens in lawsuits, where precedents are quoted on the one side, and it is replied on the other that the precedents do not apply, because the circumstances are different, and therefore the case is altered. Fabius said that in the whole course of litigation there had never been two cases exactly alike; and hence we may easily err in applying one case to another.

Example, in Rhetoric, is among the last forms of argument, fitter to illustrate than to prove.

fuerit rite demonstratum; concidit extemplo tota illa hoc fundamento nixa defensionis fabrica, nec erit apud *Judices* ullius momenti *probatio a rebus judicatis* sumpta. Hinc fit ut inter argumentationis species apud *Dialecticos, Exemplum* in postremis habeatur; velut *illustrandæ* rei, quam *demonstrandæ,* aptius instrumentum. Et profecto si sit verum illud Fabii, [n] *Tot Seculis nullam repertam esse causam, quæ sit tota alteri similis:* omnino verisimile est posse eum facile errare, qui ex *unius causæ* conditione de *altera simili,* non expensis ante cum omni diligentia utriusque *circumstantiis,* præpropere statuit.

XIII. Quo in genere, eo sumus in errorem procliviores, quod plerique hominum ita comparati sumus, ut in *exemplis* aliorum applicandis *facta* tantum ipsa intueamur, eaque avide arripiamus, et in rem nostram trahamus, si saltem *affectibus et desideriis* cordis nostri adblandiri videantur; *causæ* interim factorum, et *finis,* et *modi,* et *circumstantiarum,* earum præsertim quæ cupiditatibus nostris adversari videntur, aut nullam aut perexiguam rationem habeamus. Sugillat quosdam sui temporis propheta *Amos,* cap. vi. 5, qui in mediis publicis calamitatibus securi otio, luxu, et omne genus volupiis genium suum oblectabant; dicebantque inter alia, se *Davidis instar excogitasse sibi instrumenta musica.* Quasi dicerent, Cur id nobis vitio vertatur, quod *Davidi* laudi fuit, et honori? *Musica instrumenta* et modulationes exercuit vir ille sanctus; idem et nos facimus: dissimulantes interim, quod fuerat in illo exemplo præcipue imitandum, id a *Davide* factum in *honorem Dei,* et *publici cultus* solennitatem; non ad *conviviorum luxum,* et in fomentum *mollitiei* et *lasciviæ.*

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[n] Quintilian. Instit. Orator. VII. Proœm. [4]. Ἂν πολλὰ βάλλῃς, ἄλλοτ' ἀλλοῖον βαλεῖς. Senarius proverb. apud Aristot. de Divinat. cap. ii.

13. We may the more easily err, inasmuch as mostly we look only at the facts, if they tend to gratify our affections and desires; and neglect the cause, end, manner, and circumstances of the acts, especially if they are opposed to our inclinations. Thus Amos vi. 5, declares woe to certain luxurious persons who said that they *had invented to themselves instruments of music like David:* which they appear to have urged in defence of their habits of festivity; not attending to the main point, that he did it to promote the honour of God, and the decency of public worship; they, for mere enjoyment.

XIV. De *Imitatione Oratoria* multa præcipiunt rhetores: nimirum futuro *oratori* utile esse, ut virum aliquem egregium, et in dicendi facultate præstantem sibi proponat, quem studeat *imitari.* Quod idem ad vitæ institutionem, ut salubre præceptum, accommodant *Philosophi.* Hortatur *Seneca*[o] ut ad alicujus eximii præstantisque viri *exemplum* vitam moresque componamus: *Longum enim iter esse per præcepta, breve et efficax per exempla.* Et habet *Exemplum* conjunctam cum suadela et utilitate *oblectationem* quandam: ut in puerulis videre est; qui aliorum *jussis* cum ægre obtemperent, *facta* tamen magna cum voluptate imitantur. Sed monent tamen qui ista præcipiunt, ad *bene recteque imitandum* acri judicio opus esse, ut prudenter delectum faciamus, cum *eorum hominum* quos imitari velimus, tum *earum rerum* in quibus ipsos imitemur. Ridet *Fabius*[p] *elumbes* quosdam (ut ipse vocat *oratores,* qui affectata quadam eloquentia et inani verborum circuitu dum *Ciceronianum* dicendi genus æmulantur, magnum se quid et eximium consecutos existimabant, si in clausulis posuissent, *Esse posse videatur.* Notat et ipse *Cicero* perversam quorundam hac in re diligentiam, qui propositis sibi ad imitandum summis oratoribus, *nil illorum* (ut ille loquitur) *nisi vitium sequuntur.* Qualis erat *Fufius* quidam, *C. Fimbriæ* boni oratoris imitator non bonus: de quo ita [q]*Cicero, nervos C. Fimbriæ in dicèndo non assequitur, oris pravitatem imitatur.* Basilium Cæsareæ Episcopum, ob eximiam eruditionem et pietatem cognomento *Magnum,* in tanta fuisse apud omnes existimatione scribit *Nazianzenus*[r], ut non pauci tanti viri καὶ τὰ σωματικὰ ἐλαττώματα, pallorem oris, incessum, tardam pronunciationem, aliaque corporis vitia, studiose affectarent et æmularentur. Quemadmodum non defuisse testantur alii, qui *Demosthenis* magni Oratoris *Rhotacismum,* et summi Philosophi *Aristotelis* τραυλότητα studiose effingerent.

[s]*O imitatores, servum pecus!*

XV. *Jocum* moverent ista fateor, quæque apud probos auctores occurrunt sexcenta istis similia *perversæ imitationis*

o [Epist. vi.]
p [Quintil. Instit. Orator. x. 2.]
q [de Orator. ii. 22.]
r [Orat. xx. p. 370.]
s Horat. Lib. I. Epist. XIX. [v. 19.]

14. Even literary imitation is a proceeding, which requires much judgment to avoid absurdity. See the text.

exempla, magis quam *bilem:* si in *sermone* tantum et externo *corporis habitu gestuque* ea perversitas, non autem in *vita et moribus* obtineret. Sed et in his quoque, nihilo fortasse rarius, certe longe perniciosius, [t]*decipit exemplar vitiis imitabile:* dum pravis cupiditatibus abrepti, propriisque affectibus nimis indulgentes, e magno *exemplorum* cumulo ea fere deligimus libentius, et in ipsis eas *circumstantias* vehementius urgemus, quæ commodissime videntur in eam partem flecti posse qua inclinant jam ante animi, ut sic *affectibus* et *cupiditatibus* nostris inserviatur. Id quod facillime deprehendet ab iis egregie factum, qui εὐταξίαν ex Ecclesia, e Republica pacem exturbare moliuntur, quisquis libellos nuper ab *Anabaptistis, Brownistis,* aliisque ejusdem furfuris *Sectariis,* vel superioribus aliquot annis ab eorum vera propagine *Reformatoribus Puritanis* editos, attentius inspexerit. Cujus perversitatis in hoc hominum genere ut vobis specimen aliquod exhibeam, (quod sine justa cujusquam cordati viri offensione facturum me spero,) date mihi quæso veniam, unicum ipsorum argumentum *a Christi et Apostolorum* ejus *exemplo* ductum brevi examini subjicere: quod quum sit ab ipsis prolixe satis, addo et satis animose, tractatum; quam solide, quam sincere in eo argumento se gesserint, vestrum erit judicare.

XVI. Prodiit quadraginta circiter retro annis, adversus ritum *ingeniculationis in sacra synaxi,* editus a quibusdam *Exoniensis diœceseos* ministris, junctis scilicet operis, libellus. Inter alia quæ undique conquisita argumenta congesserunt, in hoc uno, quod a *Christi exemplo* petitum est, præ cæteris videntur quasi triumphare. Argumenti vis et summa hæc est. Non licere homini *Christiano* in actione aliqua religiosa ad cultum Dei pertinente a *Christi et Apostolorum exemplo,* quod quidem sit imitabile, ullatenus recedere, quum sit omnis

[t] Horat. ibid. [v. 17.]

15. The same is true in life and manners, where the evil is more serious. Examples have been given by the disturbers of Church and State, Anabaptists, Brownists, Sectarians of various kinds, and in our times by the Puritans; an example shall be given, taken from their mode of referring to the example of Christ and his Apostles.

16. A book was published about forty years ago, by some ministers of the diocese of Exeter, against the practice of kneeling in the celebration of the Lord's Supper. Among other arguments one was brought forward with a great air of triumph, drawn from the example

Christi actio imitabilis, et quam alii sunt recte imitati, ab omnibus Christianis *imitanda: Christum* autem et *Apostolos* alio corporis situ et non genibus subnixos, sacra signa percepisse: proinde et nobis *Christianis* pariter faciendum. Hoc tam diluto, pæne dixeram putido, sophismate cum impositum sit non indoctæ modo plebi, sed et aliis, qui si magis saperent melius cum Ecclesiis Christi ageretur: operæ pretium erit nonnulla vobis, quæ vanitatem totius argumentationis abunde demonstrent, observanda proponere.

XVII. Observate itaque *primo* μετάβασιν hic fieri εἰς ἄλλο γένος, fœdo et vix pueris condonando errore. Cum enim de *Gestu* tota lis sit, disputant illi importune admodum de *Actionibus.* Esto omnem *Christi actionem* imitandam esse: at *gestum* quis dixerit esse *actionem?* Quæ duo adeo late invicem disparata sunt, ut nec in aliquo communi genere conveniant, sed ad distincta *Prædicamenta* pertineant: *Gestus* ad Situm scilicet, *Actio* ad proprium et sui nominis prædicamentum.

XVIII. Observate *secundo*, quatuor illa ultima et minorum gentium *prædicamenta, Ubi, Quando, Situm et Habitum*, ejusdem esse fere rationis et momenti respectu illarum *actionum* quibus velut comites adjunguntur, quandoquidem nihil aliud sunt quam *relationes* quædam inferioris notæ, et *circumstantiæ* actionibus ipsis prorsus *extrinsecæ.* Non videri proinde rationi consentaneum, ut vi *exempli Christi et Apostolorum* obligemur ad eorum imitationem in *Situ* tantum;

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of Christ. The argument was to this effect: It is not lawful for a Christian man in any religious action to deviate from the example of Christ and his Apostles; But it is certain that Christ and his Apostles did not receive the bread and wine kneeling, but in another posture: Therefore we Christians ought to do the same.

17. We reply, first, that we have here the fallacy of a change of kind in the thing spoken of. The argument refers to Actions; our controversy is about Postures. Granted that every action of Christ is to be imitated: but a Posture is not an action.

The two belong to different Prædicaments: (see Note Præl. I. Art. 2.). Action is a Prædicament of itself: Posture belongs to the Prædicament Position.

18. Again, we remark that the last four Prædicaments, *Place, Time, Position, Habit;*—Prædicaments of a minor order;—are subordinate relations and extrinsic characters of the actions themselves. Hence it is not reasonable that we should be bound to imitation in

in reliquis autem tribus, *Ubi, Quando, et Habitu,* vel istorum ipsorum judicio qui hoc exemplum urgent, non obligemur. Neque enim ipsi existimant esse necessarium, aut quoad *Ubi,* ut sacra Eucharistia in *privatis ædibus* et in *cœnaculo domus superiore, ὑπερῴῳ,* celebretur, aut quoad *Quando,* ut prima nocte et *post cœnam;* aut quoad *Habitum,* ut a ministro *tunica inconsutili* induto. Quæ tamen omnia fuisse in *prima cœna* observata, ex sacra historia constat, nec est ab illis negatum. Cum ergo eam *libertatem* et ipsi sumant et aliis concedant, ut liceat a *Christi et Apostolorum praxi* in hisce omnibus illæsa conscientia discedere, libenter a novis his magistris edoceri velim, quid sit in illo *Situs prædicamento* adeo singulare, ut tam multo, sive *infra* sive *supra,* consortium suorum censum haberi mereatur, nec liceat sine grandi sacrilegio a *primitivo illo exemplo* ex hac tantum parte discedere. Æqua sane res est, ut aut pari passu ambulent quatuor ista *Ubi, Quando, Situs, Habitus;* aut justa aliqua discriminis ratio cur id ne fiat assignetur: quod non est ab iis hactenus (quod sciam) factum, nedum tentatum.

XIX. Observate *tertio,* quum debeat omne *factum exemplare* ita esse certum ut non possit negari; quod ab illis assumitur, et ego lubens *concesserim, Christum et Apostolos* non genibus flexis sed alio aliquo gestu celebrasse *primam*

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one of them, Posture, when we are not so bound in the other three. But even our adversaries do not hold us so bound: for they do not hold it necessary that we should receive the Eucharist in a like *place* with Christ; namely, in a private house, and in an "upper room;" nor at a like *time,* namely, in the evening, and after supper; nor in a like *habit,* namely, in a coat woven without seam. Why then should they hold that we should receive the Eucharist in the like *position* with Christ and his Apostles? The four prædicaments, place, time, habit, position, must either be placed on an equal footing, or some ground of difference must be shewn.

19. Thirdly: The fact alleged as an example ought to be certain: but we are not certain from Scripture in what posture Christ and the Apostles ate that Supper.

But, the opponents say, the term "sat at meat," implies at any rate a *table* posture, such as was then customary.

In reply, we deny that the term means any special kind of posture. Originally the Greek and Latin terms meant to *recline:* but the original meaning of words is constantly changed in the progress of time. The words mean, in common language, *to be at meat,* in whatsoever posture; standing, sitting, kneeling, or reclining.

illam *cœnam,* id non ita liquido constare ex aliquo Scripturæ textu, ut si pernegetur posset probari. At illud ἀνακεῖσθαι quod est in Evangeliis, annon innuit saltem *gestum tricliniarem,* illis temporibus et regionibus familiarem? Imo omnino nego ex solo usu istius vocabuli posse probari certam aliquam *Speciem situs.* Ab ea *situs* specie, quæ in *tricliniis* olim adhibita est, utriusque vocis origo fuit: Græcæ ἀνακεῖσθαι, et, quæ huic respondet, Latinæ *Discumbere.* Sed vocabulorum vim et pondus improbo examini subjiciet, quisquis ea, postquam multo usu adoleverint et se latius extenderint et dilataverint, ad prima quasi incunabula revocare, et antiquis finibus includere velit. Significant ergo illæ dictiones *ex communi usu loquendi* actum illum quo nos destinato applicamus alicui loco idoneo cibi capiendi causa; quocunque demum *situ* vel *positura* corporis id fiat, *statu, sessione, ingeniculatione, discubitu* proprie dicto, vel quolibet alio.

XX. Sed quia, licet non ex vi vocis ἀνακεῖσθαι, aliunde tamen (ex quibusdam scilicet historiæ circumstantiis) colligi videtur admodum probabiliter, *Christum et Apostolos* in prima illa cœna *gestu* usos *tricliniari:* observate *quarto,* novos hosce Dictatores nostros legi illi, quam ita severe imponunt fratrum suorum conscientiis, ipsosmet interim non parere. Si enim *Christus* in sacra cœna instituenda *gestu* usus sit *tricliniari;* exporrectis scilicet in substrato lectulo pedibus et tota corporis parte inferiore, superiore in cubitum reclinata: cur isti ipsi, qui hoc argumentandi genere tam operose utuntur, hoc *Christi exemplum,* (quod est certe *imitabile,*) non *imitantur?* Cur non sibi *lectulos* parant et *triclinia,* ut sic ab omni necessaria in eam rem supellectili instructi, eodem quo *Christus et Apostoli* gestu sacræ mensæ participes fiant? A quo *gestu* tam discedere certum est eos qui *stant* aut *sedent,* (quorum

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20. But they may reply, that if not from the word, it appears from other circumstances that Christ and his Apostles did use a table posture.

We answer, that they do not act upon this their assertion. It appears that Christ reclined on a couch: why do not they recline on couches? From this posture, they who stand, and they who sit, depart, as far as they who kneel.

They reply, that the practice of reclining has become obsolete in this our western world; but that we are holden to the same posture in kind, namely, what is now the table posture, as reclining was then. Our sitting is analogous to their reclining.

alterutrum et ipsi faciunt et aliis faciendum suadent,) quam qui *in genua procidunt.* Si dicant, et quidem dicunt, exolevisse jam olim *gestum illum tricliniarem* in hoc occidentali orbe, et proinde nos non jam teneri ad *eundem situm in specie:* teneri tamen vi primitivi illius exempli ad *eundem situm in genere,* hoc est, ut utamur saltem *gestu* (ut vocant) *mensario,* qui sit illi *tricliniari* analogus et succedaneus pro more nostræ gentis, quemadmodum illi tunc eo *gestu* usi sunt, qui ex passim recepto illorum temporum et locorum more *ad mensam* a convivis solebat adhiberi.

[u]*Ad populum phaleras!*

Adeone homines ex affectuum *præjudicio,* et *contradicendi libidine* quadam, ab omni sana mente excidisse, ut hæc tam futilia pro solidis orbi obtrudant, aut sperent istiusmodi offuciis cuiquam cordato viro imponi posse? Quæ quam sint inania et abs re, ut *breviter* et liquido ostendam; exorandi mihi sunt qui sic disputant, ut paucis his *interrogatiunculis* directe et sine aliqua tergiversatione respondeant.

XXI. Quæro ab illis *primo,* quum tam certum sit, 1
Christum, si usus est *gestu tricliniari,* nec *sedentem* comedisse, nec *stantem,* quam certum est eum, si eo gestu usus est, non comedisse *genibus subnixum:* cur non vi illius exempli tam obligemur a *sedendo* vel *stando* abstinere in ipso communicandi actu et articulo, quam ab *ingeniculando?* Ex ista enim suppositione sequitur, e *tribus* illis corporis *posituris* nullam esse, quæ non exemplo Christi æque destituatur ac *reliquæ duæ.* Æquum proinde esse, quod de *quatuor ultimis prædicamentis* paulo ante dictum est, ut pari jure fruantur singulæ: pariterque universæ vel ut reæ *damnentur,* vel ut inculpatæ *absolvantur.* Si dicant, quod est ipsorum solenne

[u] [ex Persio Satir. iii. 30.]

21. In answer, we ask, *first:* Since it is as certain that Christ did not eat sitting or standing, as that he did not eat kneeling; why are we not as much obliged by his example to abstain from sitting or standing as from kneeling? Of these three postures, each is as unsupported by the example of Christ as the other two. All the three stand on like grounds.

They reply, that reclining has, by the custom of society, been succeeded by sitting, and has not been succeeded by kneeling.

We then ask them, *secondly:* If the tacit custom of any society (say, of English society,) is sufficient to cause reclining to be succeeded by sitting or standing, at our common meals; why may not the positive

diverticulum, successisse *gestui tricliniari* ex more gentis *sessionem* vel *stationem,* non successisse *ingeniculationem:*
2 Quæro *secundo,* unde fiat, ut alicujus gentis (puta *Anglicanæ*) *tacita consuetudo* sufficiat ad hoc, ut *gestui tricliniari* succedat *sessio* vel *statio ad mensam communem; lex* autem *positiva* ejusdem gentis non sufficiat ad hoc, ut eidem *gestui* succedat *ingeniculatio ad mensam sacram?* Poteritne sensim et sine publica auctoritate *immutata consuetudo* id efficere, ut non ultra *deceat* vel *liceat* quod olim nec *indecens* habitum est nec *illicitum?* non poterit publica auctoritate *sancita* lex, populi etiam expresso consensu stabilita, usuque diuturno et moribus comprobata, id efficere, ut saltem *licitum* deinceps habeatur, quod nulla legitima ratione constat fuisse unquam *illicitum?* Ubi revera pugnant inter se duæ res, *Lex et Consuetudo,* (quod hic tamen vix fit) æquum esse fatebitur quisquis incolumi capite est, ut cedat *Legi* consuetudo, non
3 *Consuetudini* Lex. Quæro abs illis *tertio,* existimentne serio, an non existiment, continuo peccare eum qui *ad mensam communem flexis genibus* cibum caperet. Si *peccare* dicant; quum sit omne *peccatum* divinæ legis transgressio, cedo ejus *legis præceptum* aliquod, contra quod sic faciendo peccetur: si fateantur *sine peccato* id fieri posse; annon animadvertunt ea confessione sua se vineta cædere, et argumentationis suæ
4 vim omnem evertere? *Quarto,* supposito quod exolevisset jam olim *gestus* ille *tricliniaris,* eique successisset *statio* vel *sessio* ante primam illam cœnam, ita ut oportuerit *Christum*

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law of the same society be sufficient to cause the same posture to be succeeded by kneeling at the Lord's table? Can a change of custom which takes place gradually and without public authority produce such an effect, that what was decent and lawful before is afterwards neither decent nor lawful; and yet can a law, sanctioned by public authority, established by the express consent of the nation, and confirmed by daily usage and habit, *not* make that at least lawful which was never unlawful on any legitimate ground? If Law and Custom be really at variance, (which is hardly the case here,) Custom must yield to Law, not Law to Custom.

We ask them, *thirdly:* Do they seriously think that a man who takes an ordinary meal kneeling, necessarily commits a sin? If they assert this, since all sin is a transgression of a divine law, I ask what law he transgresses? If they grant that there is no sin in this, whence arises the sin of the same posture in the Lord's Supper?

We ask, *fourthly:* If the practice of reclining had already become obsolete in the time of Christ, and standing or sitting had succeeded

et Apostolos aut *stantes* comedisse aut *sedentes;* quum utrum-
que simul fieri non potuerit: quæro, num si illi *stantes* come-
dissent, nobis etiam ita *stare* necessarium esset, ut *sedendo*
peccaremus, et e contra; vel *liberi* essemus ad utrumlibet?
Si dicant nos *liberos esse ad utrumlibet;* omnino jacet
argumentum ab *exemplo Christi* ductum: quia supponitur
illum *alterutrum* tantum fecisse, non *utrumque.* Si dicant,
nos præcise teneri ad *illam Speciem* qua supponitur *Christum*
fuisse usum; cur ergo ipsi tam severi dictatores libertati
cujusque ecclesiæ permittunt *standi* vel *sedendi* optionem?
Quæro *quinto,* si nos obliget *exemplum Christi* ad sui imita- 5
tionem; cur determinetur hæc obligatio præcise in *gestu men-
sario,* quæ est species *subalterna,* et non vel citerius stet in
genere aliquo *superiori,* vel ulterius protendatur ad *speciem*
aliquam *inferiorem?* Hoc est quærere, Quum sint tria hæc,
Gestus ut genus superius, *Gestus mensarius* ut species ei
subalterna, *Gestus tricliniaris* ut species infima; *Christus*
autem et *gestu* usus fuerit, et *gestu mensario,* et *gestu tricli-
niari:* cur *gestus mensarius,* quæ est intermedia species,
censeri debeat ad rectam *Christi* imitationem et necessarius
et sufficiens; et non vel *gestus aliquis* in genere *sufficiens,*
vel *gestus tricliniaris* in specie *necessarius?* Quæro *denique* 6

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it, so that they had eaten that Supper standing or sitting; since we cannot do both at once, if they had eaten standing, should we have been bound to eat standing, and should we sin if we did it sitting? Or should we be at liberty to do either?

If they say that we might in that case have done either, they give up the argument taken from the example of Christ.

If they say that we should have been held to the very posture used by Christ, why do they, so rigid on this supposition, allow, as the case now is, to every church the liberty of standing or of sitting?

We ask, *fifthly:* Granting that we are obliged to imitate the example of Christ, why is this obligation defined so as to prescribe that particular genus of Posture, a Table Posture, which is subalternate, that is, intermediate between a superior and an inferior genus of posture? The Postures here concerned have three orders from general to special: *Posture,* the higher genus, *Table Posture,* the intermediate genus, *Reclining Table Posture,* the lower genus. Now Christ used a Posture, a Table Posture, a Reclining Table Posture: why, then, is the intermediate genus, Table Posture, both necessary and sufficient for the right imitation of Christ, and not either the higher genus, Posture, *sufficient,* or the lower genus, Reclining Table Posture, *necessary?*

We ask, *lastly:* Whether the Posture used by Christ and his

fueritne *gestus* [*tricliniaris*] a Christo et Apostolis in prima cœna adhibitus *Imitabilis,* vel non? *Imitabilem* fuisse (sat scio) non negabunt, imo ne possunt quidem negare, qui inde præcipuum causæ suæ firmamentum petunt: sic enim proponunt *Christi exemplum* nobis de necessitate *imitandum,* non omne simpliciter, sed omne quod est *imitabile.* Quod igitur illi ultro largiuntur, libens accipio: et *Propositionem,* scilicet, *Omne Christi exemplum imitabile* obligare Christianos ad sui imitationem; et *Assumptionem* pariter, scilicet gestum illum in specie (sive fuerit ille *tricliniaris,* quod admodum probabile est, et nunc saltem supponimus, sive quis alius) quo Christus in prima illa cœna usus est, *esse imitabilem.* Ex his præmissis sic colligo, Ergo vi istius exempli obligabantur *proximi* post Christum *seculi Christiani* ad eundem *gestum in specie,* quo usus est Christus; ergo similiter obligabantur et *secundi seculi,* itemque *tertii* et sic deinceps usque ad hæc tempora. Ergo et præsentem ecclesiam ad *gestum tricliniarem* in specie *obligari* fatendum est, si *Christus* eo gestu usus est: aut saltem ostendendum est, quo tempore, qua ratione, quo auctore, quo jure et auctoritate sublata sit illa *obligatio.*

XXII. Ex his quæ dicta sunt liquet, *Argumenti* illius, quod tanta cum pompa ab illis instruitur, vim omnem eo tandem recidere, ut non possit rectius et in rem suam accommo-

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Apostles in that first Lord's Supper were imitable, or not? Of course they will allow it to be imitable, for that it is so, is the basis of their whole argument: they say that every example of Christ which is imitable, is to be imitated. We assume, then, this proposition, that every imitable example of Christ obliges Christians to imitate it; and again, this other proposition, that the Posture of Christ in that first Supper, (whether a reclining Posture, as is most probable, or any other,) was imitable. Hence it follows, that by the force of Christ's example, the Christians of the first century were obliged to adopt the same specific Posture which Christ used; and therefore, in like manner, those of the second century; and thence, those of the third; and so on, up to our times. And therefore the Church at the present day must be obliged to the same specific Posture; to the Reclining Posture, if that were the Posture used by Christ: or if not, at least, it must be shewn when that obligation ceased.

In the beginning of this Sixth Argument of the present Article, I conceive that the word *tricliniaris* interferes with the course of reasoning. I have therefore included it in brackets.

22. This argument, therefore, which has been brought forward with so much pomp, amounts to this: that the example of Christ and

datius proponi, quam sub hac forma. *Exemplum Christi* et Apostolorum in tantum obligat, quantum nobis visum est expedire ut obliget; sed nobis expedire visum est ut obliget ad *non ingeniculandum,* ulterius vero non obliget: ergo eatenus tantum obligat, et non ulterius. Piget ista, fateor: non est aut hujus loci, aut istius ætatis, aut moris nostri, *risum captare in re seria.* Sed quid facias istis hominibus? Nimirum indiget istiusmodi patrocinio causa non bona: nec fieri potest, ut non multa inania, et si penitius examinentur perabsurda, sibique parum consentanea, dicere sæpenumero cogantur, qui *partium* magis studio duci se patiuntur quam *veritatis.* Equidem ex animo loquor, et quod res est: Etsi multa passim in eorum Scriptis occurrant *parum solide* disputata, utinam non quædam etiam *parum sincere;* non memini tamen uspiam me observasse tanto cum conatu et molimine meras nugas agi, aut ex tanta montium parturitione tam misere ridiculum prodire fœtum, quam cum *nuda piorum exempla* e Sacris literis adducta, aut ad *excusandum* ea facta quæ videntur lege aliqua divina *prohiberi,* aut ad inducendum *obligationem* in conscientia in his quæ non videntur lege aliqua divina *præcipi,* importune urgentur. Sed unde digressus sum, si tamen digressus sum, redeo, et pergo ad

XXIII. *Argumentum quartum,* ab Exemplorum fine et usu proprio. Habere enim *Exempla* suum usum, eumque ad *morum* institutionem, *vitæque* emendationem permagnum, omnino fatendum est. Alioquin nec tam multa in sacris literis perscripta essent, (quæcunque enim perscripta sunt, *εἰς τὴν διδασκαλίαν ἡμῶν, Rom.* xv. 4; *πρὸς νουθεσίαν ἡμῶν,* 1 *Cor.* x. 11, ad nos erudiendos aut commonefaciendos perscripta

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his Apostles obliges us, as far as we think it expedient that it should oblige us: but it seems to us expedient that it should oblige us to abstain from kneeling: therefore it does oblige us so far and no farther.

And in general, nothing is more absurd trifling than to take the examples of pious men, from Scripture, in their naked form, and to use them either to excuse what is forbidden by any divine law, or to oblige the conscience to that which is not commanded in any divine law.

23. *Fourth Argument.* From the proper use of examples: which use is not as a rule of life; but for encouragement, to support us against the fear of God's severity, and of the difficulty of obeying; against temptation, reproach, and weariness. See the passages quoted in the text.

sunt,) nec tam constanter ab Apostolis ubique inculcarentur. *Sumite, fratres mei, pro exemplari patientiæ prophetas. Audivistis patientiam Jobi. Elias oravit.*—Omnia hæc *Jac.* v. 10, 11, 17; *Imitatores mei estote, sicut ego Christi,* 1 *Cor.* xi. 1; *Quæ audivistis, et vidistis in me, hæc agite, Phil.* iv. 9; *Eos considerate, qui sic ambulant sicut habetis nos pro exemplari, Phil.* iii. 17; et similia passim: At non est is usus aut finis *Exemplorum*, ut sint nobis pro *regula vivendi:* sed ut sint subsidia quædam et *adminicula*, et quasi *stimuli* ad excitandam ignaviam nostram et torporem excutiendum, cum segniores sumus et tardiores in officio faciendo, quam par est. Solet enim fragilitas humana, objecta præsertim gravi tentatione, accedente etiam Satanæ et mundi impulsu, de *severitate legis* Dei et *obediendi difficultate* multa apud se submurmurare, imo et aperte quandoque conqueri: in via qua eundum est grassari *leones;* undique strui pedibus suis *laqueos, insidias, scandala;* perferendas *injurias, contumelias, calumnias, bonorum rapinam;* caros *parentes*, cariora *pignora, uxorem, amicos, possessiones, patriam, vitam ipsam relinquenda*, imo et *odio habenda.* Quam duri sunt hi sermones! quam non ferendum jugum! Quoties subeunt mentes nostras istiusmodi *cogitationes*, ita ut jam pene [x]despondeamus animum, et omnem officii curam velut rei impossibilis et in quam inanis sit omnis opera nostra et irriti conatus, tantum non abjicere incipiamus: *excitantur* aliquantulum languentes Spiritus, et ad contemnendas omnes *difficultates*, superandas *tentationes*, perferendas *contumelias*, paulatim erigitur animus [y]opportuna *Exemplorum* auctoritate. Cum serio cogitamus viros, pios quidem et Sanctos, sed *ὁμοιοπαθεῖς ἡμῖν*, iisdem quibus nos *perturbationibus, cupiditatibus, tentationibus* obnoxios, gratia Dei (quæ nec nobis defutura est, si ab eo toti pendeamus, et conatus simul nostros fideliter adjungamus) adjutos, ea omnia et *perfecisse et pertulisse*, quæ nobis aut *facienda* aut *ferenda* Deo sic dispensante incumbunt: redire mox animi, incalescere pia æmulatione pectora, et [z]*inter meditandum exardescere ignis*, dum erumpant tandem e plenitudine cordis hæ aut persimiles voces, *En me paratum, Domine, obire quod jubes, subire quod imponis.* [a]*Nubes* illa *testium*, quæ nos quacunque

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[x] *Turpiter desperatur, quicquid fieri potest.* Quintil. Instit. Orator. i. 10. [8].

[y] *Cum quid difficile videtur, difficiliora alios obeuntes recenseamus.* Tertullian. ad Uxor. Lib. I. cap. 6.

[z] Psalm. xxxix. 4.

[a] Hebr. xii. 1 etc.

circumspectamus cingit undique, suadet ut omni abjecto ægri animi tumore et gravedine, peccatique, quæ ut nos arcte *complectitur,* ita per Dei gratiam, si strenue conemur, non ægre *comprimitur* importunitate, *propositum nobis stadium* fortiter et constanter et patienter *decurramus.*

XXIV. Hortatur *Jacobus Apostolus,* cap. v., ad orationis instantiam, exemplo *Eliæ,* qui importunis suis precibus (προσευχῇ προσηύξατο) cœli ostia quasi pro arbitrio obseravit et reseravit. Quod nequis existimaret *Eliæ* meritis et sanctitati deberi potius, quam *divinæ promissioni* fidelium precibus ex fœdere gratiæ factæ; præripit hanc suspicionem *Apostolus* in ipso narrationis exordio, *Elias,* inquit, *homo erat* ὁμοιοπαθὴς ἡμῖν, vers. 17: *homo* erat; non *Deus,* aut *Angelus;* nec de *meliore luto,* sed ex eadem qua ceteri homines *massa* effictus. Hic est ergo usus *Exemplorum* proprius et perutilis: ast meminisse interim oportet, *Exempla* non esse *regulam* ipsam, nec *regulæ* pondus et instar habere; imo esse et ipsa, siqua dubitandi ratio appareat rectene an secus facta sint, ad *regulam* diligenter exigenda. Ὑπόδειγμα λάβετε τοὺς προφήτας, inquit *Jacobus,* cap. v. 10: ubi nescio an illud ὑπόδειγμα specialem habeat ἐνεργείαν et vim: Mihi certe innuere videtur Sanctorum prophetarum actus non esse παράδειγμα, *exemplar* illud *principale* quod est præcipue nobis intuendum; sed quasi illius ἀπόγραφον et *secundarium exemplar,* quod non est ex se et propter se authenticæ auctoritatis, sed eatenus fidem habet et auctoritatem, quatenus *concordat cum Originali.* Ex hactenus dictis ergo conficitur, Non sufficere ad *bonitatem actus* humani, quod sit alicujus *viri Sancti exemplo* conformis: nec proinde posse cujusquam *conscientiam* in ejusmodi conformitate, nisi sit et ipsum *exemplum regulæ* conforme, secure et tuto acquiescere.

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24. St James exhorts us to prayer by the example of Elias; but in order that we may not think that his prayers prevailed through his own merits, he calls him (v. 17) "a man subject to like passions as we are."

Perhaps in James v. 10, ὑπόδειγμα is a word which implies less authority than παράδειγμα would:—not an Exemplar and First Standard, but a Copy, having authority only so far as it agrees with the Original.

And thus it appears that it is not sufficient for the goodness of any action, that it conform to the Example of some holy man; nor can a man's conscience safely rest on such conformity, except the Example be conformable to the Moral Rule.

XXV. Porro, ut ad alteram propositi nostri partem tan-
dem accedamus, eadem ferme ratio est *Judicii* alieni, quæ et
Exempli; idque ob easdem fere causas: ita ut hac in re non
sit opus multis. Percurram itaque breviter. *Primo,* sunt
omnes homines, quantumvis *docti* et *pii,* non minus *Erroribus*
quam *Peccatis* obnoxii; imo fortasse vel multo magis, quo
acutiore mentis indagine opus est, ad internoscendum *veri et*
1 *falsi* discrimen, quam *boni et mali.* Ex *Ignorantia* illa na-
turali, qua mentes nostræ velut caligine quadam obductæ sunt;
2 ex *Educatione,* quæ animos nostros adhuc teneros fingit et
efformat, et notionibus quibusdam instruit et imbuit, quas non
3 facile est eradere; ex longo usu et *Consuetudine,* quæ velut
4 altera natura est; ex *pravis affectibus,* qui judicio offundunt
nebulas, et rectum ejus usum impediunt; ex aliis ejusmodi
causis permultis, adeo proclive est homini *Errare, Labi,*
Decipi, ut jam olim in proverbium abierit [b] *Humanum esse*
errare.

XXVI. Adde huc *secundo,* quod nec ipsi semper de eorum *pietate et prudentia,* quorum *judicia* sequi volumus, sincere judicamus. Quin solenne est iis qui se permittunt *alieno arbitratu* duci, eos sibi *duces* deligere, quos jam ante sciunt ducturos se in ea via, qua ipsi jam ante constituerant proficisci. Sic homines incautos *Satanas* quasi circulo inclusos tenet. Si quæras, cur hoc putent esse verum et rectum, respondent, Quia ita nos docuit hic vel ille *vir pius et prudens:* Si quæras iterum, qui sciant doctorem illum suum esse *virum*

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[b] Cicero. Orat. Philipp. xii. [cap. i. § i. *Cujusvis hominis est errare.*]

25. So much of the authority of the *Example* of pious men; we have now to shew also that the *Judgment* of pious men is not a sufficient ground for the satisfaction of the conscience.

The arguments are nearly the same for this as for the other branch of the argument.

First, all men, however learned and pious, are liable to errour, as well as to sin: perhaps even more liable to errour than to sin, since it requires more acuteness to distinguish between truth and falsehood than between good and bad. Men err from Ignorance, Education, Custom, Perverse Affection, and many other causes.

26. *Secondly;* men do not judge impartially of the piety and wisdom of those whose judgment they wish to follow. They choose those as leaders who will lead them the way they have resolved to go. They are enclosed in a vicious circle. If you ask why this or that is true and right, they reply, Because we are so taught by this or that

pium et prudentem, respondent, vel responderent saltem si ex animo loqui vellent, Quia nobiscum sentit.—

[c] *Et sapit, et mecum facit, et Jove judicat æquo.*

Metiuntur nimirum plerique mortalium *pietatem alienam*, non ex praxi officiorum *vitæ Christianæ*, et ex operibus justitiæ, misericordiæ, caritatis, et devotionis; sed ex *studio* earum *partium* quibus se addixerunt, et earum *odio* quibus se inimicos profitentur:—κατὰ τὰς ἐπιθυμίας τὰς ἰδίας ἑαυτοῖς ἐπισωρεύοντες διδασκάλους, inquit Apostolus, 2 *Tim.* iv. 3, *coacervantes sibimetipsis doctores secundum proprias concupiscentias:* κνηθόμενοι τὴν ἀκοὴν, ut ibidem sequitur aptissima metaphora. Cum iis *aures pruriunt*, quærunt scilicet qui eas *scabant:* atque ita accidit eis quod veteri proverbio dici solet, *Muli se mutuo scabunt.*

XXVII. *Tertio*, diserte nos prohibet sacra Scriptura, aut *alterius* cujuslibet *judicio* conscientias nostras subjicere, aut in *alterius conscientiam* dominium exercere. *Ne vocemini Rabbi, unus est enim vester* ὁ καθηγητὴς, *magister*, præceptor, doctor, ductor *Christus*, *Matth.* xxiii. 10; *Ne multi estote magistri, fratres mei, Jac.* iii. 1; *Pascite qui in vobis est gregem Dei*, ὡς τύποι, ut facem ei præferentes, veræ fidei doctrinam et vitæ piæ exemplum, sed non ὡς κατακυριεύοντες τῶν κλήρων, 1 *Pet.* v. 1, *non quasi exercentes dominatum* et imperium merum *in Clerum* et populum *Dei; Empti estis pretio: nolite fieri servi hominum*, 1 *Cor.* vii. 23: ut conscientias vestras cujusquam hominis auctoritati ex ipsius arbitrio et imperio regendas permittatis.

XXVIII. Hinc ergo illud imprimis sequitur, (ut ex iis, quæ a nobis hactenus posita sunt et probata, *corollaria*

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[c] Horat. Epist. II. i. [v. 68.]

person, a pious and wise man; and if you ask them how they know their teacher to be a pious and wise man, they answer, or would answer if they were frank enough, Because he is of our opinion. Men judge of the piety of their neighbours, not by their practice of Christian duties, but by their being of their own religious party: men have itching ears, and scratch one another.

27. *Thirdly;* Scripture forbids us both to subject our consciences to the judgment of any one, and to exercise dominion over any other man's conscience. See the passages quoted in the text.

28. We draw a few brief Corollaries.

First; to condemn the pride and tyranny of the Roman Pontiff,

nonnulla inferam, sed pauca, et paucis) merito exosam esse debere cuilibet Christiano *Romani Pontificis* conjunctam cum summo fastu, non ferendam *tyrannidem:* qui dum sibi suæque Cathedræ arrogat *judicium infallibile,* exercet eo nomine, quasi jus suum, *dominatum in conscientias* hominum: eousque, ut si dicat *virtutes* esse *vitia,* et *vitia virtutes,* teneantur sub mortali peccato omnes *Christiani* ipsius judicio sine ulla hæsitatione semet subjicere. Et proinde agnoscendam esse cum omni grati animi significatione summam et singularem Dei Opt. Max. in nos bonitatem et misericordiam, qui nos patresque nostros et *Ecclesiam Anglicanam* tam iniqua *tyrannide* dudum exemerit, et justæ *libertati* quasi postliminio restituerit.

XXIX. Atqui *secundo,* cavendum nobis et universis et singulis, ne illa *tyrannide* liberati, *novo jugo* colla subdamus; nec tam *excussisse* jugum, quam *permutasse* deprehendamur.

[d] *Quæ bellua ruptis*
Quum semel effugit, reddit se prava catenis?

Interest profecto nostra, si aut internæ *Conscientiæ,* aut externæ *Reipublicæ et Ecclesiæ* paci serio consultum velimus, omnino curare, ne ut olim in Ecclesia Corinthiaca[e], *Ego sum Pauli, ego Apollo, ego Cephæ,* sic apud nos istiusmodi voces audiantur, *Ego sum Lutheri, ego Calvini, ego Arminii, ego Socini.* Quin esto [f] *omnis homo mendax, et verax solus Deus.* Non est dignus qui sit *Christi,* qui non est *unius Christi,* discipulus. Actum est de fidei Christianæ simpli-

[d] Horat. Satir. Lib. II. [vii. v. 71 sq.]
[e] 1 Cor. i. 12.
[f] Rom. iii. 4.

who claims infallible judgment, and asserts a right over the consciences of men; to such an extent that if he says that virtues are vices, and vices are virtues, all Christians are bound, under pain of mortal sin, to submit without any hesitation to his judgment.

And we must acknowledge the goodness of God in delivering us, our fathers, and the English Church, from this tyranny; and restoring to us, with our liberty, the rights which had been suspended during our slavery.

29. Secondly; to take care, lest, being freed from that tyranny, we come under a new yoke: lest, as the Corinthians were blamed for saying, *I am of Paul,* and *I of Apollos,* and *I of Cephas,* so men among us say, 'I am of Luther,' and 'I am of Calvin,' and 'I am of Arminius,' and 'I am of Socinus.' But *let God be true, and every man a*

citate et sinceritate, postquam itum est *in partes:* Neque ulla spes est ante restitutum iri pristino vigori et virori *Religionem Christi,* quam diducta tot fracturis et scissuris vulnera, fraternæ condescensionis oleo velut malagmate delinita, in eandem *fidei* et *caritatis* unitatem coeant et coalescant.

XXX. Cavendum porro *tertio,* ne pravis affectibus indulgentes, ita nos abduci patiamur in cujusquam *personæ admirationem,* ut ex ipsius auctoritate toti pendeamus [g] θαυμάζοντες πρόσωπα ὠφελείας χάριν. Quibus verbis intendit digitum *Apostolus* ad ipsissimum totius *mali fontem.* Nempe non aliunde emanavit omnis illa *nominum* perversa *admiratio,* quam ex perdita illa et nimia *sui admiratione.* Dum quisque propriæ *utilitati* studet, inservit *honori, gloriæ* velificatur; alios omnes æstimat ex *suo commodo:* et corrupto jam hisce affectibus judicio, eos protinus *admiratur* maxime, quos *utilitati, honori, gloriæ,* aliisque suis cupiditatibus minime adversaturos arbitratur. Quod ipsum alter etiam Apostolus, quem ante citavimus, clare significat, ubi notat homines *sibi* [h] κατὰ τὰς ἰδίας ἐπιθυμίας *præceptores deligere.*

XXXI. Ceterum ut, non obstantibus quæ a me dicta sunt, sua constet interim et *Ecclesiæ Catholicæ,* et unicuique *viro docto et pio,* justa auctoritas: Admonendi estis *primo,* judicio et praxi *Universalis Ecclesiæ,* in sacrarum literarum interpretatione et in dijudicandis fidei et morum controversiis,

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[g] Jud. Epist. v. 16. [h] 2 Tim. iv. 3.

liar. He is not worthy to be Christ's disciple, who is not of Christ alone. Party spirit has been the ruin of Christian simplicity and sincerity. Our only hope for the restoration of Religion to its former vigour is, that the wounds of the time should be healed by the balsam of brotherly love, and should grow together into unity of faith and charity.

30. Thirdly; we are to avoid being led away by our affection to admiration of any particular person, so as to be dependent on his authority. Jude says (v. 16), *Having men's persons in admiration because of advantage:* he thus points out the source of the evil. That admiration of names arises from admiration of ourselves. We admire those who least oppose our advantage, honour, and glory, and thus the judgment is corrupted. Men seek to themselves teachers *after their own lusts.*

31. Notwithstanding what has been said, let both the Catholic Church and every learned and pious man have his just authority.

First, the judgment and practice of the Universal Church must

plurimum deferri oportere: *Secundo,* et viri docti judicio et *auctoritati* nonnihil tribuendum, ad *eximendum* ex animis hominum *scrupulos* minus necessarios, atque etiam ad *dirigendum* conscientias *in rebus dubiis,* de quibus non potest aliter haberi ulla *certitudo.* Sed de horum utroque, erit fortasse posthac commodior dicendi locus.

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have great weight in the interpretation of Scripture, and in the decision of controversies of faith and of morals.

Second, something must be allowed to the judgment and authority of a learned man, for the purpose of removing unnecessary *scruples* in men's minds, and directing conscience in *doubtful* matters, concerning which certainty is not otherwise to be had.

In Sanderson's fourth Sermon *ad Clerum,* Art. 23 sqq. he treats of a Resolved Conscience, a Doubting Conscience, and a Scrupulous Conscience.

PRÆLECTIO QUARTA.

IN QUA, QUÆ SIT *ADÆQUATA CONSCIENTIÆ REGULA*, DISQUIRITUR ET STATUITUR.

JAC. IV. 12.

Unus enim est Legislator, qui potest servare et perdere.

I. QUAM parum sit unicuique præsidii, ad *Conscientiæ* suæ sive *fructum*, ad excusandum ea quæ hactenus *fecerit*, sive *securitatem* ad *ἀφόβως* aggrediendum quæ porro *facturus est*, si ea aut sola *boni finis intentione*, aut alieni tantum *exempli* vel *judicii* auctoritate nitantur: satis a me superque proximis duabus prælectionibus demonstratum est. Eo nimirum consilio, ut sublatis e medio his velut obicibus, expeditior mihi et complanatior esset via, ad ea quæ de *Conscientiæ obligatione* dicere institueram. Quæ *Obligatio* cum sit duplex: *Activa* scilicet, per quam inducit alteri obligationem, et *Passiva*, per quam alterius obligationi subest: postulat ordinis ratio, ut a *passiva* ordiamur. Tunc enim de *re mensurata* securius pronunciare poterimus, postquam constituerit *mensuram* ipsam esse justam. Quod ergo nunc agitur hoc est, ut inquiramus quid sit id quod proprie *obligat Conscientiam:* sive, quod idem est, quæ sit propria

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1. It having been shewn in succession that Good Intention, the Example of others, and the Judgment of others, is *not* a safe Rule for Conscience, the author proceeds to examine what *is* the Rule.

The obligation of Conscience is twofold (see *Prælec.* II. Art. 2): the *Active* Obligation, by which it obliges; the *Passive* Obligation, by which it is obliged.

We must consider the latter first; we must know that the Measure is a just one before we can pronounce concerning the thing measured.

We must therefore now inquire what obliges the Conscience, that is, what is the proper and adequate Rule to which a right Conscience must conform. We shall make some explanatory Remarks, and then state certain Conclusions.

et adæquata *Conscientiæ Regula*, cui se (ut *recta* sit) conformare teneatur. Quæ inquisitio ut certius et commodius instituatur, paucis quibusdam velut explicandi gratia præmissis, rem ipsam tandem quibusdam *Conclusionibus* complectar.

II. Sciendum itaque *primo*, Conscientiæ, ut munus suum debite exequatur, necessariam esse aliquam *Regulam*, cui subesse debeat. Ubicunque enim est *virtus* aliqua *activa*, quæ non est de natura sua *determinata ad unum* in agendo, sed est *in potentia ad utrumlibet*, ita ut possit recte agere vel secus; sive ea *virtus* sit *habitus* de prima, sive *potentia naturalis* de secunda specie Qualitatis: oportet ut sit *lex* aliqua vel *regula*, (*νόμος* sive *κανών*) quæ eam in agendo dirigat. Quotiescunque enim aliquid se ut *faciendum* offert phantasiæ, sive a sensu externo repræsentatum; sive ex interna quadam animi suggestione; quia *Voluntas*, quæ est proximum agendi principium, est (ut dici solet) *potentia cæca*, nec potest ex se *malum* a *bono* discernere, ut ita sit ipsa sibi *regula:* ratio inquisitiva mox ad *Conscientiam* recurrit, ut ejus *dictamen* audiat. Cujus munus est rem propositam statim *examini subjicere;* examine facto, sitne persequenda vel fugienda, facienda vel omittenda *judicare;* et prout judicaverit, ita voluntati *dictare:* hoc est, rem eam *libero arbitrio* ut eligendam vel non eligendam proponere. Ad quod *exami-*

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2. *First Remark:* A Rule is necessary in order that Conscience may duly perform its office. For when there is any active Virtue which is not determined to one course by its nature, but may act either way, that is, rightly or otherwise, there must be some Law or Rule to direct it.

The Will is a *blind* power, and cannot discern good from evil, so as to be its own Rule; and therefore when anything offers itself to be done, whether suggested to the Fancy by the external senses or by the internal feelings, the reason has recourse to the Conscience, and asks for its verdict. The Conscience examines the matter proposed, judges whether it is to be done or to be avoided, and according to its judgment dictates to the Will; that is, presents it to the Free-Will as eligible or ineligible. And in order that the Conscience may be able thus to examine, judge, dictate, and may not be a blind leader of the blind Will, there must be a Rule for its judgment.

[When the author says that an active Virtue requires a Rule, whether it be a Habit, the first kind of Quality, or a Power, the second kind, he refers to the distinction already noticed (*Præl.* I. Art. 2) of the Prædicament *Quality* into Habit, Power, Affection, and Form.]

nandi, judicandi, dictandi munus, ne temere id præstet et ὡς ἔτυχεν, et *cæcam voluntatem* ipsa non minus cæca in transvorsum ducat: Opus est ut certa aliqua sit *norma,* ad quam fiat *examen.*

III. Sciendum *secundo,* esse in *Regulis,* sicut et in *Causis,* subordinationem quandam: et sicut in *Causis* invicem *ordinatis,* posteriores quæque si ad priores comparentur habent rationem *Effectuum;* sic in *regulis* et *mensuris* invicem *ordinatis,* posteriorem quamque respectu superioris habere rationem *regulati* sive *mensurati. Regula* igitur *Conscientiæ* cum sit duplex; altera *proxima* et immediata, *prima* et remotior altera: *regula illa proxima,* sicut habet rationem *regulæ,* respectu ipsius *Conscientiæ,* quam dirigere debet, sic habet rationem *regulati,* respectu *regulæ primæ,* a qua et ipsa dirigenda est.

IV. Sciendum *tertio,* quum consistat cujusque rei *rectitudo* in conformitate ipsius ad suam *regulam:* sicut est *duplex,* ut jam diximus, *Conscientiæ regula;* proxima et remota; ita *duplex* est etiam *Conscientiæ rectitudo,* duplici illi regulæ respondens. Potest enim *Conscientia recta* dici, vel ἁπλῶς, simpliciter, absolute et *usquequaque recta;* vel κατὰ τὶ, secundum aliquid et *quadantenus recta.* Hoc modo *recta* est, si sit conformis *regulæ* suæ *proximæ* et immediatæ: quemadmodum is dicitur de aliqua *propria passione* habere *scientiam* certam et veram, qui potest ipsam de suo

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3. *Second:* There is a subordination among Rules, as there is a subordination among Causes; namely First Causes and Second Causes, prominent Causes and remote Causes. And as, in this series and order of Causes, the later or lower Causes are as Effects, compared with the earlier or higher; so in the series and order of Rules and Measures, the lower are, with regard to the higher, as things ruled and measured. Now the Rule of Conscience is twofold; the one, proximate and immediate, the other, primary and remote: and this being so, the proximate Rule, which stands as a Rule with regard to Conscience which it regulates, stands as a Thing Ruled with regard to the Primary Rule, by which it is regulated.

4. *Third:* Inasmuch as Rectitude or Rightness in anything consists in the conformity of the thing to its Rule, and the Rule of Conscience is twofold; a proximate and a remote Rule: so the Rightness of Conscience is twofold, corresponding to the twofold Rule. Conscience may be right, simply, absolutely, and entirely; or relatively, and to a certain extent. Conscience is right in this latter way, if it is conformable to its proximate Rule. But Conscience is right in the former way, when

subjecto per *proximam sui causam* demonstrare, etsi nequeat ulterius ascendere. At illo modo tum demum *recta* est *Conscientia*, cum et ipsa *regulæ suæ proximæ* conformis est, et illa insuper regula *regulæ primæ:* quemadmodum is dicitur habere rei alicujus *certam*, (id est perfectam,) *scientiam*, qui omnes ejus *causas* novit usque ad *primas*. *Tunc enim unamquamque rem scire dicimur*, (inquit Philosophus initio *Lib.* I. *Physic.*), *cum omnes ejus causas, principia, et elementa cognoscimus usque ad prima.* Proinde ut *certitudo scientiæ*, etsi oriatur *immediate* ex cognitione *causæ proximæ*, resolvitur tamen *ultimate* in cognitionem *causæ primæ:* Sic *rectitudo Conscientiæ*, etsi attendatur *immediate* penes conformitatem ad *regulam suam proximam*, resolvitur tamen *ultimate* in *regulam suam primam* et supremam.

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both it is conformable to its proximate Rule, and also the proximate Rule to the Primary Rule.

This is illustrated by the case of knowledge or science. He is said to have certain and true knowledge of any attribute, who can prove it to be true of its subject by means of its proximate cause, though he cannot ascend higher in the series of causes. But he only has certain, that is, perfect knowledge of this, who knows all the causes, up to the first cause. He quotes Aristotle, *Phys.* I. 1, τότε γὰρ οἰόμεθα γινώσκειν ἕκαστον ὅταν τὰ αἴτια γνωρίσωμεν τὰ πρῶτα καὶ τὰς ἀρχὰς τὰς πρώτας καὶ μέχρι τῶν στοιχείων.

And thus, as the Certainty of Knowledge, though it arise immediately from the certainty of the proximate cause, is yet resolved ultimately into the knowledge of the first cause; so the Rightness of Conscience, though it imply immediately conformity to its proximate rule, is ultimately resolved into its primary and supreme rule.

[The doctrine that the conformity of Conscience to its proximate rule makes it relatively right, but that the conformity of the proximate rule to the primary rule is requisite in order to make it absolutely right, is sound Morality; but Sanderson has not sufficiently illustrated by examples what he means by the proximate and what by the ulterior Rules of Conscience.

The attempt to illustrate the subject by a reference to the kinds of knowledge cannot now be considered as throwing much light on the subject. Aristotle's views of the nature of Science cannot be substantiated by referring to actual Sciences, such as we now have, and such as had hardly begun to exist in Aristotle's time. We now know, by such examples, that Science does not consist in the knowledge of successive orders of causes up to the first cause.

Of the Conscience as possessing a proximate but not an ultimate authority, see *Elements of Morality*, Art. 269, &c.]

V. Sciendum *quarto*, cum de *Obligatione Conscientiæ* loquimur, obligationem illam non significare *coactionem* aliquam (*Conscientia* enim, proprie loquendo, non magis *cogi* potest, quam ipsum *Liberum arbitrium;*) sed imperium potius et potestatem urgendi eam (cum *auctoritate* tamen cui ipsa obedire tenetur) ad faciendum quod sui est officii: eodem omnino modo, quo *Princeps* qui habet potestatem νομοθετικὴν, ferendo leges *obligat* subditos ad ipsarum observationem. Sicut ergo in foro externo subditos ad obediendum *obligat* proprie et formaliter, non [a]*Lex* ipsa, sed *potestas Legislatoris;* vere tamen dicitur et *Lex ipsa obligare,* etsi improprie et quasi *materialiter,* sive *terminative,* quia per eam et ad eam fit *obligatio;* sicut dicitur *Lex* etiam *judicare,* (*Num Lex nostra judicat quenquam? Joh.* vii. 51), etsi ipsa non *judicet,* sed *Prætor,* quia Prætor debet *secundum legem* judicare: Sic et in foro interno *Conscientiam* proprie *obligat,* non *regula* sive *lex* ei imposita, sed *potestas* et *auctoritas* imponentis: ita tamen ut ex consequenti vere et non incommode, licet minus proprie, dici possit regulam ipsam *obligare.* Cum ergo quæritur, quid sit illud quod *obligat Conscientiam* ad faciendum officium suum; utrumque hoc quæritur: *Primo* et principaliter, quis sit *dominus Conscientiæ,* qui jus habeat et potestatem imponendi ei *legem* seu *regulam* cui se debeat conformare; deinde *secundario* et consequenter, quæ sit *regula Conscientiæ,* seu Lex ab illo domino suo imposita, cui ex ejus imperio conformare se teneatur?

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[a] [conf. infra Præl. v. 5; et viii. 15.]

5. *Fourth:* When we speak of the (passive) *Obligation* of Conscience, we do not mean its being forced, or of anything as having the power of forcing it. Conscience can no more be forced than Free-Will can. We mean a power of urging it authoritatively to do its duty; in the same way that the Sovereign who has the legislative power, by making laws, obliges the subjects to obey them.

But as in the visible court of justice, it is not, properly speaking, the Law which obliges the subject to obedience, but the Legislator; so in the internal court of Conscience, it is not, properly speaking, the Rule or Law imposed upon it, but the power and authority of the Imposer of the Rule.

(And yet the Law is, improperly, said to oblige men, as the Law is said to judge, Joh. vii. 51, though it is the magistrate who judges. And so in like manner the Rule may be said to oblige Conscience).

Hence, in inquiring what obliges Conscience, we must inquire first, who is the *Lord* of Conscience, and secondly, what is the *Law* which he imposes upon it.

VI. Sciendum *quinto*, cum quicquid alteri attribuitur, attribuatur vel *per se*, vel *non per se;* idque iterum dupliciter, vel *non per se*, i. e. *per aliud*, vel *non per se*, i. e. *per accidens:* res illas proinde, quibus vis *obligandi Conscientiam* quovis modo attribui posse videtur, esse in triplici discrimine. Vel enim *primo obligant* Conscientiam *per se simpliciter;* hoc est, directe ex se et vi propria obligant, non solum ut τὸ *per se* opponitur τῷ *per accidens*, sed etiam ut opponitur τῷ *per aliud;* Vel *secundo obligant per se respective*, prout τὸ *per se* opponitur τῷ *per accidens*, sed non prout opponitur τῷ *per aliud;* hoc est, *obligant* non ex vi sua propria, sed virtute alicujus alterius vim *obligandi* habentis: Vel *tertio obligant per accidens tantum*, et neutro modo *per se*. Quin et in illis quæ *secundo modo* obligant discrimen aliquod observandum est, pro diversa ratione illius causæ ex qua oritur *Obligatio*. Aliter enim se res habet, cum ex *aliena auctoritate* necessario inducitur *obligatio:* aliter, cum ex *propria voluntate* sponte contrahitur. Ex quibus omnibus efficitur, ut sint eorum quæ *obligant Conscientiam* gradus omnino *quatuor*. Exempli gratia (ut et ea quæ dicta sunt rectius intelligatis, et eorum quæ dicenda forent rudem quandam ὑπογραφὴν ὡς ἐν τύπῳ habeatis;) Obligat *primo, per se et vi propria*, expressum Dei mandatum: Obligant *secundo*, nulla tamen vi sua, sed *virtute divini præcepti*, Leges humanæ et mandata Superiorum: Obligant *tertio*, ex libera cujusque electione et *facto proprio*, cum ei integrum ante esset aliter fecisse, sponte suscepta Vota: *quarto* denique, et *ex accidente*, obligat Lex sive ratio Scandali.

VII. Sciendum *ultimo*, *Obligationem* illam duntaxat quæ est *in primo gradu* esse *absolutam* et *universalem;* reliquas tres *relativas* et *particulares*. Illa *absoluta* est, quia

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6. *Fifth:* There are four ways in which something may be said to oblige Conscience: 1°, The Express Command of God obliges it, of itself and by its proper force: 2°, Human Laws oblige it, not by their own force, but in virtue of the divine command: 3°, Our own Promises and Vows oblige it, by our own election and act: 4°, The Fear of giving Offence obliges it, by virtue of a collateral and accidental influence.

[I do not attempt to give the analysis by which our Author shews that there *must be* four such ways in which things may be said to do anything, for instance, to impose an obligation].

7. *Sixth:* Of the four modes of Obligation just mentioned, the first only is absolute and universal, the three others are relative and

directe obligat, et *semper*, et *universos:* et est ejus vinculum plane insolubile. Reliquæ *relativæ* dici possunt, tum quia non ex se et vi propria obligant, sed *per relationem* ad præceptum aliquod aut institutum Dei; tum quia non *semper*, *ubique*, et in omni casu *obligant*, sed quando rationes illæ, quas respicere debent, exigere videntur. Præjudicat ergo *primi gradus Obligatio* cuivis obligationi in aliis quibuscunque gradibus: ita ut ipsa reliquas irritas faciat, non autem ipsam illæ. Imo universim *Obligatio in Superiore* quoquo *gradu* validior est, ceteris paribus, *obligatione in gradu* quocunque *inferiore*, atque ei præjudicat; vel *tollendo* jam contractam, ut plerumque: vel saltem, idque perpetuo, *impediendo* contrahendam. Cedant ergo oportet quantum ad *obligandi* vim *leges humanæ* divinis, *privatæ pactiones* et promissiones Constitutionibus publicis, hisce demum omnibus *Scandali lex*.

VIII. His ita præmissis, ut certa nobis constet vivendi lex, ea quæ de *Conscientiæ Regula* et ejus *Obligatione passiva* sunt maxime scitu necessaria, quibusdam *Conclusionibus*, prout pollicitus sum, complectar.

Conclusio Prima. *Deus solus merum et directum habet imperium in Conscientias hominum.* Ita ut extra Deum nemo potestatem habeat *legem* imponendi *conscientiæ* cujusquam

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particular. The first is absolute; for it obliges always and obliges everybody, and its bond is indissoluble. The others may be called relative, because they do not oblige by their proper force, but by relation to some command of God; and do not oblige in all times, places, and cases, but when due relations require.

An obligation of the first kind bars obligations of the other kinds; they do not bar it. And generally speaking, an obligation of any higher kind, other things being equal, bars obligations of the lower kinds; either by annulling them when contracted, or by precluding their being contracted.

And thus, human laws must give way to divine; private compacts, to public laws; and the law of avoiding offence must give way to all these.

8. We shall now state our Conclusions concerning the passive Obligation of Conscience.

Conclusion First. God alone has a pure and direct authority over man's Conscience: that is, no one but God has power to impose upon the Conscience a law which is obligatory of itself. We say *of itself*, because we are all in Conscience obliged to obey just human laws, to keep our promises, to shun scandal: but we are obliged to these things only so far as they agree with the commands of God.

hominis, cui ut *per se obligatoriæ* subjicere sese debeat. Dico *per se*, quia *obligamur* omnes in conscientiis justas *leges humanas* observare, *fidem* Deo vel hominibus datam præstare, ne simus aliis *scandalo* cavere: sed ad ista omnia non aliunde *obligamur*, nisi in quantum ad *Dei voluntatem* ista omnia imperantis revocantur; ut de singulis suo loco videbitur.

IX. Probatur hæc *Conclusio*. *Primo* ex verbis illis *Apostoli* jam propositis, *Unus enim est legislator, qui potest servare et perdere:* Ubi duo se offerunt in rem nostram
1 argumenta. *Primo* enim Deum asserit esse *unum Legislatorem:* Non unum e multis, vel præ ceteris unum; sed *exclusive unum*, hoc est, *unicum*. Alias argumento usus esset Apostolus ad probandum quod volebat parum efficaci. Reprehendit nimirum eos, qui de *personis* aut *factis* alienis temere ferebant judicium, ut juris alieni invasores. *Quis tu, inquit, qui alium judicas?* Quasi diceret, Nôris te qui sis, et quas res agas. Non est tuum falcem tuam in alienam messem immittere; multo autem minus in omnipotentis Dei solium temet audacter ingerere. Si nescis, *illius unius* est de conscientiis hominum *judicium ferre*, cujus unius est ipsorum conscientiis *Leges imponere*, is autem præter *unum*
2 *Deum* nullus est: εἷς ἐστιν ὁ νομοθέτης. *Deinde* soli Deo potestatem asserit servandi et perdendi: Unde *secundum* extruitur *argumentum*. Is solus jus habet *conscientiis* aliquid imperandi aut prohibendi, qui potestatem habet *conscientiam* imperata facientem gratuitis *præmiis*, detrectantem justis *suppliciis* afficere; At penes *unum legislatorem* Deum est hominibus *præmia et pœnas* pro conscientiæ cujusque qualitate *retribuere:* Ipsi ergo soli jus est in hominum *conscientias*.

X. Probatur *secundo*. Qui solus novit internos *Conscientiæ* motus, solus potestatem habet *Legem* illis præstituendi; quia *Lex* de ignotis nec statuit nec judicat: at *soli Deo καρδιογνώστῃ* cogniti sunt interni cordium et *conscientiarum*

9. This Conclusion is proved; *First;* from the words of the Apostle, Jam. iv. 12, *There is one Lawgiver, who is able to save and to destroy.* Where we find two arguments to our purpose: 1°, God is the only Lawgiver; therefore he alone has authority over the Conscience.

2°, God can save and destroy; therefore he can, and will, enforce his authority by rewards and punishments.

10. *Second* proof: God only knows the heart. Human laws can only regulate external acts: they have no power over the Conscience.

motus: ergo penes ipsum solum potestas est *legem* Conscientiis imponendi, quæ ipsas obliget. Hinc est quod *leges humanæ externos* tantum corporum *motus obligant* ad *externam* conformitatem; a quarum imperio et cognitione *internæ* interim cogitationes, omnesque mentium et *conscientiarum* motus prorsus immunes sunt. Adeo ut non tantum viri Sancti et veri Dei cognitione imbuti, quales fuere *tres viri* illi apud Babylonios captivi, *Dan.* iii., et *Maccabæi* fratres septem; sed et Ethnicorum sapientes plurimi tyrannorum minas et tormenta riserint, ut qui non in ipsos, sed in ipsorum θυλάκους tantum et ἀποδέρματα sævierint. Quin audiamus quid Servator noster *Christus* hac in re et ipse senserit, et suis præceperit, *Nolite,* inquit, *timere eos, qui cum interemerint corpus, non habent quod amplius faciant: sed metuite eum, qui potestatem habet ubi occiderit, et in infernum conjiciendi, Luc.* xii. 3, 4. Quasi dixisset, Habent tyranni ex permissione Dei in *corpora* potestatem: ast in *animas* hominum et *conscientias* nullam habent ἐξουσίαν, jus nullum. Non possunt aut *leges* rogare, aut irrogare *pœnas*, quæ ad interiorem hominem pertineant. In *totum hominem* Dei unius jus est: qui potest neglecti officii non a *Corpore* solum, sed et ab *Anima* pœnas sumere, et *totum hominem* æternis suppliciis addicere.

XI. Probatur *tertio,* ex conditione ipsius *Conscientiæ,* et naturali ejus statu: quam jam ante diximus ita medio quodam inter Deum et hominis voluntatem intervallo positam; ut quod de *Regibus* et *Imperatoribus* vere dici solitum est, de singulorum hominum *Conscientiis* non minus vere dici possit, *Solo Deo minores* esse, nec *aliquem in terris Superiorem* agnoscere. Memorabile est *Maximiliani primi* Imperatoris quod legimus dictum illud, *Conscientiis dominari velle est arcem cœli invadere.* Prædator est gloriæ Dei, et

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Accordingly such laws have on grounds of Conscience been resisted to the death by good men; as the three Jews, who (Dan. iii.) refused to worship the image set up by Nebuchadnezzar: and the seven brethren who (2 Maccab. vii.) refused to eat swine's flesh at the command of Antiochus. And even the heathen have refused to obey tyrants who could only harm the outward case and clothing of the man. And so Christ himself teaches, Luke xii. 3, 4. Hence God alone has authority over the inner man.

11. *Third* proof: the position of Conscience is such (*Prælec.* II. Art. 1), that it is (as is said of Sovereigns) inferior only to God, superior to all earthly authority. Maximilian I. rightly said, that to pretend

potestatis ei debitæ nefarius invasor, quisquis in *conscientias* hominum aut sibi *jus* arrogat, aut *dominatum* exercet. Viderint *Romani Pontifices,* quique illis aut *Canonistæ* parasitantur, aut supparasitantur *Jesuitæ* ceterique, ut se hujus tam immanis sacrilegii crimine liberent. Quin et illos quoque, qui *Conscientias* suas quæ soli Deo absolute subesse debent, ullius creaturæ potestati ita subjiciunt, ut ex illius arbitrio toti pendeant, cautos velim, ne dum *servitutis honorem,* qui Deo soli jure debetur, in creaturam conferunt, e creatura (quod interpretative saltem *idololatria* est) Deum faciant. Ex hac *prima Conclusione* quam hactenus firmavimus sequitur hoc *πόρισμα, Regulam Conscientiæ* propriam eam esse, quam ipsi Deus *Supremus Legislator* præstituerit, nec extra eam aliam admitti oportere.

XII. Sequitur CONCLUSIO SECUNDA. *Conscientiæ Regula proxima* et immediata (etsi nec *adæquata,* nec *summa,*) est *Lumen menti pro tempore præsens:* Id quod alii *Lumen rationis,* alii *Legem mentis,* Scholastici fere post [b]philosophos *rectam Rationem* appellare solent. Probatur hæc *primo* ex S. Scripturæ locis aliquot, *Luc.* xii. 57, *Quare non ex vobismetipsis judicatis quod justum est?* inquit Servator Christus. Quasi diceret, est vobis *internum lumen,* a vera illa luce mentibus vestris inditum [c]*quæ illuminat omnem hominem veni-*

[b] [μόνῳ] τῷ λόγῳ, καθάπερ ἐπιτρόπῳ σώφρονι, παρακαταθετέον τὸν βίον. Socrates ap. Stobæum [Florileg. Tit. 3. 43. Vol. I. p. 95. Ed. Gaisford.]

[c] Joh. i. 9.

to command men's Conscience is to assault the fortress of heaven. Hence it follows as a Corollary, that the right Rule of Conscience is that which God the Supreme Legislator gives to it, and no other.

A caution is here suggested to Popes, Canonists, and Jesuits, who pretend to rule men's Consciences; and to those who yield up the government of their Consciences to any man, giving to the Creature what belongs to the Creator.

12. CONCLUSION SECOND. The *Proximate* Rule of Conscience (though neither the complete Rule nor the highest Rule) is the Light of the Mind for the present time. This is what some call the *Light of the Reason;* others, the *Light of the Mind;* others, *Right Reason.*

This is proved, *First,* from Scripture: Luke xii. 57; Joh. i. 9; Rom. ii. 14, 15.

From the passage, Rom. ii., it appears that Conscience, in its acts which refer to things already done, (bearing witness, accusing, excusing,) judges by the natural Light of Reason. And hence it must judge of things to be done, and exercise the acts thereto pertaining (examin-

entem in hunc mundum; cujus ope, nisi vobis ipsis deesse velitis, poteritis

[d]*Rectum dignoscere curvo,*

et iniquo secernere justum. Est et notissimus locus, *Rom.* ii. 14, 15, *Cum gentes quæ legem* (Scriptam scilicet) *non habent, natura ea quæ sunt legis faciunt,* (i.e. exercent actus *prudentiæ justitiæ, fortitudinis, temperantiæ,* et reliquarum virtutum,) *isti legem non habentes sibi ipsis sunt Lex: Qui ostendunt opus Legis Scriptum in cordibus suis, testimonium una perhibente conscientia sua, et invicem se cogitationibus accusantibus vel etiam defendentibus.* Ex quibus verbis manifestum est *Conscientiam* in illis suis actibus (*Testificandi, Accusandi, Defendendi,*) quos exercet circa jam facta, de illis omnibus ex impresso menti *Rationis lumine* judicare. Unde consequitur, cum sit de *præteritis* et *futuris* eadem judicandi *regula,* Conscientiam et in illis suis actibus qui circa *facienda* versantur, (*Examinandi, Judicandi, Dictandi, etc.*) eodem illo *lumine,* ut eorundem actuum *regula* et *mensura,* uti. Illud *Psalm.* iv. 6, quod a plerisque *Latinorum Patrum* posterioris præsertim ævi, et a *Scholasticis* passim affertur in firmamentum hujus Conclusionis, *Signatum est super nos lumen vultus tui, Domine,* prudens omitto, cum nitatur illa verborum interpretatio versione non proba, nec videatur ad mentem et scopum Prophetæ multum pertinere.

XIII. Probatur *secundo,* ex communi *more loquendi.* Solemus enim dicere, eum qui secundum *lumen mentis* suæ operatus est, *bona* usum *conscientia;* etsi fortassis id *fecerit* vel *omiserit,* quod non fuit ab eo *faciendum* vel *omittendum:* eum e contra, qui *dictamini mentis* suæ non auscultaverit, sed contra fecerit, *mala conscientia* rem egisse. Paulus

[d] [Horat. Epist. II. ii. 44]; *τὸ οἰκεῖον καὶ ἀψευδὲς κριτήριον,* Gregor. Nazianz. [Orat. xvi. cap. v. Opp. Tom. I. p. 302. B. Edit. Bened.]

ing, judging, dictating,) by means of that same Light, as the Rule and Measure of such acts.

Psalm iv. 6, (in the Vulgate, *Signatum est super nos lumen vultus tui, Domine,*) does not bear upon this subject, when rightly translated, as in our version, *Lord, lift thou up the light of thy countenance upon us.*

13. Proof *Second:* This is implied in the common usage of language. When any one acts according to the Light of his Mind, we say commonly that he acts *with a good Conscience:* although he did what he ought not to have done, or left undone what he ought to have done. And on the other hand, if a person does not accord-

Apostolus, *Act.* xxiii. 1, profitetur se *omni bona conscientia Deo serviisse usque ad illum diem.* Quæ verba, si et ad anteriorem vitæ partem, cum nondum factus esset *Christianus,* extendenda sint, (quod multis placuisse video, et mihi quidem videtur valde probabile:) Statuendum est eum, etsi Christiano nomini et fidei infestissimum hostem, et ut ipse fatetur [e]*persecutorem* adhuc et *blasphemum,* dici tamen potuisse etiam tum *omni bona conscientia* πεπολιτεῦσθαι τῷ Θεῷ quod omni illo tempore nil fecerit, nisi quod *conscientia* ipsius, pro mensura *luminis* quod tunc habuit, faciendum sibi dictaverat. *Revera enim existimabat,* ut ipse, in altera sua apud *Regem Agrippam* apologia, palam et sincere profitetur [ἔδοξα ἐμαυτῷ] [f]*oportere se adversus nomen Jesu Nazareni multa contraria facere.* Sed quicquid de *Paulo* ejusque tunc temporis *Conscientia* statuendum sit, illud interim certum est, Deum ipsum testimonium perhibuisse [g]*Abimeleco,* qui *Abrahæ* uxorem ignarus rei in contubernium suum accersiverat, id ab eo *in integritate cordis sui,* (id est, *bona conscientia*) factum fuisse; non alia sane ratione, quam ea qua se excusabat [h]*Abimelecus,* quod scilicet si eam scisset fuisse maritam, non eam fuisset in ædes suas deducturus. Potest ergo *Conscientia,* ex ignorantia non culpabili, (forte an et aliunde) *erronea,* vel Deo judice dici (non quidem *sim-*

[e] 1 Tim. i. 13.
[f] Acts xxvi. 9.
[g] Gen. xx. 6.
[h] Gen. xx. 5.

ing to the dictates of this natural Light, we say that he acted *with a bad Conscience.*

Acts xxiii. 1, Paul says that *he had lived in all good Conscience before God until that day.* Probably these words are to be extended to the part of his life before he was a Christian; and though he was then a persecutor and a blasphemer (1 Tim. i. 13), yet because he thought he ought to do such things (Acts xxvi. 29,) he might be said to have acted in good Conscience.

Gen. xx. 6. God says to Abimelech, *I know that thou didst this in the integrity of thy heart;* that is, with a good Conscience, as Abimelech himself had pleaded, ver. 5.

Therefore Conscience, though erroneous, when the errour arises from ignorance without blame, may be, even in the sight of God, good and right, relatively, though not absolutely; if it conform to the Light of the Mind, which is its proximate Rule.

In order that Conscience may be absolutely and completely right, it must conform to its primary and supreme Rule; of which hereafter.

pliciter et absolute, sed tamen quadantenus et *secundum quid*) *bona et recta*, propter conformitatem quam habet cum *lumine mentis* suæ, ut *regula sua proxima* et immediata. Sed ut ὁλοκλήρως et usquequaque *Recta* dicatur, huic *Conformitati* accedat oportet altera et ulterior, ut nimirum *conformis* sit *Regulæ suæ primæ* et supremæ. Quænam autem sit illa, aliquanto propius inquirendum est.

XIV. Esto itaque hæc CONCLUSIO TERTIA. *Sacra Scriptura, sive verbum Dei Scriptum, non est Conscientiæ Regula adæquata.* Probatur *primo*, Extra cujuscunque rei *regulam adæquatam*, non est necessarium ut sit ejusdem rei *regula* aliqua alia: *adæquatio* enim excludit necessitatem alicujus *supplementi;* Sed extra sacram *Scripturam* necesse est ut sit alia *Conscientiæ Regula.* Alias *Gentes* quæ non habent *Scripturam*, nullam haberent conscientiæ suæ *regulam:* quod rationi, experientiæ, et Apostoli ([1]loco paulo ante citato) aperto testimonio vel maxime adversatur. Inesse omnibus hominibus *conscientiam*, eamque alicui *legi* subesse, quæ ipsam ut *norma* dirigat, res ipsa clamat. Unde enim illæ, quarum meminit, Apostolus, extantque in historiis et in vita communi plurima passim exempla, graves illæ conscientiæ *accusationes;* easque consecutæ animorum *ægritudines, flagella, cruciatus, tormenta*, illæ Tragicorum *Furiæ* et Ἐριννύες; nisi ex violata *Conscientiæ lege?* Quæ si nulla esset; essent eo feliciores barbarissimi quique populi, quanto ab *Evangelii* voce et sonitu

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[1] Rom. ii. 14.

14. CONCLUSION THIRD. The Scripture, the written word of God, is not the *complete* Rule of Conscience.

Proof *First:* If the Scripture were a complete Rule of Conscience, there would be no necessity for any other added to that. What is complete requires no supplement. But there must be some other Rule of Conscience besides Scripture: for if not, the Gentiles, who have not the Scripture, would have no rule for their Conscience; which is contrary to what St Paul says, Rom. ii. 14, just quoted.

We have, in many ways, evidence that man has a Conscience, and that this is directed by a law. From the violation of this law arise the accusations of Conscience already spoken of, and the consequent remorse: and this is figured by the Furies and the Erinnyes of the Tragedians. If there were not such inflictions, nations would be happy in proportion as they were out of the reach of the Gospel, for then they would have no sin, Rom. iv. 15, 1 John iii. 4. But Conscience is manifest and conspicuous among the heathen. Therefore Scripture is not the complete Rule of Conscience.

remotiores: utpote quibus nulla posset juste imputari *peccati culpa.* [j]*Ubi enim non est lex, nec transgressio* esse potest, quum sit *Peccatum* nihil aliud quam *Legis transgressio,* [k]*ἡ γὰρ ἁμαρτία ἡ ἀνομία.* Magnam esse [l]*Conscientiæ vim* in utramque partem, ut et nihil metuat, qui nullius sibi culpæ conscius est, et nihil non metuat, quem exagitat scelerum suorum conscientia; Veterum *Ethnicorum* non *Scholæ* tantum personant, sed et *Rostra* et *Theatra:* qui tamen nihil de *Mose,* nihil de *Christo,* nihil de *Lege et Prophetis,* nihil de *Evangelio et Apostolis,* unquam inaudiverant. Ergo non est *Scriptura* sola et *adæquata Conscientiæ Regula.*

XV. Probatur *secundo,* a proprio *Sacræ Scripturæ* fine, qui est [m]*σοφίσαι εἰς σωτηρίαν, Sapientes nos reddere ad salutem* æternam per fidem quæ est in Christo Jesu. Cum enim non posset *lumen naturalis Rationis* ad ea quæ nos perducant ad *finem supernaturalem* sufficienter pertingere, cum propter obscuratum nimis ex Adæ lapsu *naturale* illud *lumen,* tum etiam quia ad *finem supernaturalem* opus est *mediis supernaturalibus:* placuit Deo, imbecillitatis nostræ habita ratione, *voluntatem* suam pro ea qua ipsi visum est mensura hominibus in *verbo* suo patefacere. Gratioso admodum, et nobis salutari consilio: ut non solum ea quæ proprie sunt *fidei,* nec possunt *lumine naturæ* cognosci, nobis nota fierent per *revelationem divinam;* sed et in iis quæ *natura nobis cognita* sunt, perfectius et salutarius instrueremur: quo nimirum ea ipsa *opera,* quæ *natura* dictat esse utcunque facienda, ex nobiliori *principio* orta *Dei amore,* et ad nobiliores *fines* ordinata *Dei gloriam et animarum nostra-*

j Rom. iv. 15.

k 1 Joh. iii. 4. [conf. infra Præl. v. Sect. 5; VIII. Sect. 24.]

l [Cicero ubi supra Præl. I. Sect. 1.]

m 2 Tim. iii. 15.

15. Proof *Second:* The proper end of Scripture is to *make men wise unto salvation through faith in Christ Jesus,* 2 Tim. iii. 15: the Light of natural Reason is insufficient to guide us to the supernatural end of man's being; both because that light was obscured at the fall of Adam, and because, to a supernatural end, supernatural means are necessary. Therefore it pleased God to reveal his Will in his Word: both in order that the things of faith which cannot be known by the light of Nature, may be known by Revelation; and in order that in those things which are known to us by nature, we may be more perfectly instructed. By Revelation we learn that works which Nature teaches us are to be done as being right, are also to be done from the higher

rum salutem, e moralibus *Spiritualia* fierent, Deoque per Christum grata et accepta. Est ergo *Scriptura,* quoad *supernaturaliter credenda,* sola et *adæquata Fidei regula:* estque eadem, quoad *agenda* etiam, quatenus sunt *Spiritualia* et ad finem *supernaturalem* ordinata, sola et *adæquata Morum Regula;* atque ita ex consequenti, agendorum *Regula* principalis, et ut ita dicam, *Architectonica.* Sed cum ad *Conscientiam* spectat circa *res agendas* inquirere, non ea duntaxat ratione qua sunt *Spirituales,* an fiant *ex charitate,* et *in finem supernaturalem* dirigantur; sed ea etiam qua *Morales* sunt, sintne *bonæ* vel *malæ, licitæ* vel *illicitæ, liberæ* vel *necessariæ:* ut de his rebus rite judicetur, non ex sola *Scriptura,* sed et aliunde etiam petenda sunt opportuna adjumenta.

XVI. Probatur *tertio,* ex ipsius *Scripturæ* forma, charactere, et temperamento. Quæ cum plurima contineat non unius generis *præcepta,* quarum alia ad *Mores* pertinent, alia ad *Ritus;* alia omnibus ex æquo *communia,* alia certo alicui populo, ordini aut personæ *peculiaria;* quædam *ad tempus* aliquod duratura, alia *perpetuæ obligationis;* quædam *κατὰ γνώμην,* vel *κατὰ συγγνώμην,* et quasi per modum *consilii* de rebus aut plerumque expedientibus, aut pro certo rerum statu et conditione temporum, quædam *κατ' ἐπιταγὴν,* et quasi per modum *mandati,* de rebus simpliciter et ubique necessariis: si non esset alia aliqua *regula extra scripturam* discernendi *moralia præcepta* a ritualibus, *temporaria* a perpetuis, *singularia* a communibus, omnino in incerto hæreret sæpissime *Conscientia,* quo se verteret nescia; præsertim cum *diversi*

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principle of the love of God, and to the higher end of his glory, and our own salvation. Thus Scripture, as to what is to be believed concerning things beyond Nature, is the sole and complete Rule of Faith; and moreover, as to things to be done, in so far as they are spiritual and ordained to a supernatural end, it is the sole and complete Rule of conduct. But in so far as things to be done are of a moral character, and as to the question, whether they are good or bad, lawful or unlawful, free or necessary, we must decide, not from Scripture alone, but from other helps also.

16. Proof *Third:* The form, character, and manner of Scripture proves the same thing. For in Scripture, precepts of various kinds are mingled together: moral and ritual; such as are general for all men, and such as are peculiar to some one people, order, or person: such as are temporal, and such as are of perpetual obligation; some are delivered *after the judgment* of the writer, (1 Cor. vii. 40), or *by permission,* (ib. v. 6), in the way of advice: some, *by command,* (ib.)

generis præcepta eodem quasi halitu prolata, eodem sermonis tenore, et verborum continuo nexu, immediate invicem se consequuntur. Exempli gratia, *Levit.* xix. 18, præceptum est *de diligendo proximo sicut seipsum:* Versibus immediate sequentibus præcipitur ne *duorum generum jumenta* coire sinantur, ne ager *diversi generis seminibus* seratur, ne vestis *e lini lanæque textura* conficiatur. Quorum illud *morale et universale* præceptum esse, ista (sive *Ceremonialia* sive *Judicialia*) uni Judaico populo *peculiaria*, nemo est qui dubitat. Sed cum hæc leguntur in Ecclesiis, quod sit inter ea aliquod ejusmodi discrimen, non potest ex aliquo ipsius textus indicio constare. Ejusdem etiam capitis *versu* 30 *Sabbati sanctificatio, et Sanctuarii reverentia,* continua verborum serie pariformiter præcipiuntur, idque eadem solenni juris Sanctione, *Ego Jehovah:* esse tamen non dubito qui putent, altero præcepto *Conscientias* hominum etiamnum teneri, altero non teneri. Cur tamen sic putent, cum sit in ipso Textu ubi omnia sunt paria tam lati discriminis nec vola nec vestigium, non aliunde certe est, quam ex *rationis* et *prudentiæ* judicio: quo secluso non possunt *obligatoria præcepta* a non obligatoriis sic dignosci, ut non fluctuet sæpenumero *conscientia,* nec certo sciat, quid sibi faciendum sit, quid non faciendum, judicare.

XVII. Probatur *quarto,* ex incommodis diversæ sententiæ: nimirum gravissimis illis malis, quæ *Ecclesiam Christianam* jamdiu exercuerunt, postquam ex male intellecta de *Sacræ Scripturæ perfectione* doctrina, obtinuit apud aliquot magni nominis viros periculosissimus error, nihil *licite fieri* posse nedum *præcipi,* quod non esset a Deo in *Scriptura* aut

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If there were no Rule but Scripture itself for discerning among these different classes, the Conscience must often be at a loss.

And especially as these different classes are indiscriminately mixed together: for example, Levit. xix. 18. [See *Elem. Moral.* Art. 553]. And again, Lev. xix. 30, *Ye shall keep my sabbaths, and reverence my sanctuary: I am the Lord.* No doubt some persons hold that the former part of the precept is binding on their consciences, and that the latter is not so. But they can found such an opinion only on grounds of reason. Hence, without the Light of Reason we cannot distinguish when precepts of Scripture are obligatory.

17. Proof *Fourth:* From the inconveniences of the opposite opinion. From the doctrine of the sufficiency of Scripture, ill-understood, has arisen, in modern times, a dangerous errour, that nothing

præceptum, aut laudabili saltem *exemplo* comprobatum. Hoc semel jacto fundamento, cœpere mox præfervidi ingenii viri non pauci, *Zelo Dei* (ut ex charitatis judicio credere par est) *sed non secundum scientiam* abrepti, de *ritibus Ecclesiasticis* rixas et turbas ciere non necessarias. Scilicet eliminandas ex Ecclesiis Christi et abigendas procul *Ceremonias* in sacris literis non præscriptas; *Leges* de rebus Adiaphoris ab hominibus latas refigendas; reformandas per orbem *Ecclesias;* et ad Evangelicam *puritatem* et *simplicitatem* omnia revocanda. Stetit hic aliquandiu, sed non diu hic stetit, effrænis hominum temeritas: sed, ut fieri amat, ἑνὸς δοθέντος τἄλλα συμβαίνει. Hoc fonte derivata *audacia,* effluxit tandem in apertam *rabiem,* et exivit jamdiu in *furorem Anabaptisticum.* Et quamvis quo porro progrediatur vix habeat; usque tamen progreditur indies, et nova quotidie parturit opinionum monstra: ut nisi ex sacrosancto Dei verbo didicissemus [n]*firmum stare fundamentum Dei,* neque adversus Ecclesiam Christi [o]*prævalituras unquam* ex toto *inferorum portas;* omnino metuendum foret, ne universa Christi *Ecclesia, Atheismi* velut diluvio obruta, toto orbe funditus periret.

XVIII. Neque vero existimet quis, ista me declamatorio more invidiosius conqueri, quam pro rei ipsius merito. Id enim mihi persuasissimum est, qui hunc errorem penitus imbiberit, importunis *Anabaptistarum, Socinianorum,* aliorumque quos nominare non libet apud nos *Sectariorum* argumentis, in plerisque earum quæ nunc dierum agitantur

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[n] 2 Tim. ii. 19. [o] Matt. xvi. 18.

may be lawfully done which is not either commanded, or recommended by some approved example, in Scripture. Hence have arisen wranglings concerning the rites of the Church; demands for the abolition of ceremonies not prescribed in Scripture; for the revision of human laws concerning things indifferent; for the reformation of the Church throughout the world, and its restoration to evangelical purity and simplicity. After pausing at this point for a while, this spirit has gone on to the frenzy of the Anabaptists; and it is impossible to foresee how far it may go. We might be led to despair, if we had not the promises of God, as Matt. xvi. 18, 2 Tim. ii. 19.

18. This is not mere declamation: for he who has adopted this errour (of the all-sufficiency of Scripture) cannot make any good answer to the arguments of Anabaptists, Socinians, and others, on the greater part of the controversies now going on. For, (to omit the question of Church-government, which our new politico-theologians,

controversiis, nullo modo posse satisfacere. Nam ut certam *Ecclesiastici regiminis formam* prætercam, quam heri nati *Politico-Theologi* nostri non aliunde quam ex hoc ipsissimo fundamento, quod eam e *Scripturis* nusquam constare putent, aut penitus *sublatam* volunt, aut (quod parum abest) *ad civilem Magistratum delatam: diei Dominicæ* observationem, *Ministrorum* Evangelii missionem, *baptismum infantium*, aquæ in baptismo pro totius corporis immersione *inspersionem*, *Sacramentalem gratiam*, aliaque permulta quæ depromptis e *Socini* pharetra telis strenue oppugnant moderni *Sectarii*; aut ex Ecclesia una cum *ritibus et legibus Ecclesiasticis* exterminanda esse, ex suo illo principio concedant necesse est; aut mutata in melius sententia, una cum illis et ista etiam sine peccato retineri posse fateantur.

XIX. Atqui hoc est, inquietis, *Scripturæ perfectioni* (quam libenter agnoscunt omnes *Reformatarum Ecclesiarum* Theologi) derogare, *Pontificiorum Traditionibus* januam aperire, et argumentis *a Scriptura negative* ductis, quibus usi frequenter et priscæ Ecclesiæ *Patres*, et utuntur etiam horum temporum doctissimi quique *Theologi* vim omnem adimere. Respondeo, *Pontificios* perfectioni Scripturæ in eo derogare,

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merely because they do not find it appointed in Scripture, wish either to overturn, or to have put in the hands of the civil magistrate,) there are other points which modern sectaries assail with Socinian arguments; as, the observation of the Lord's Day, the Mission of the Ministers of the Gospel, the Baptism of Infants, the substitution of Sprinkling for Immersion in Baptism, Sacramental Grace. These tenets they must either reject, along with the Rites and Laws of the Church, on their own grounds; or else must give up their principle, and allow that the latter, as well as the others, may be retained without sin.

[The "*heri nati Politico-Theologi*," of whom Sanderson speaks, are the Presbyterians and Independents, who rejected the historical traditions of the Universal Christian Church. There was some boldness in using such language as that of the text in 1647, when the parties so spoken of were in power. The year after he delivered these Lectures he was deprived of his Professorship, in consequence of refusing to take, among other engagements, the parliament ordinance for church-discipline and worship.]

19. It will be objected, that by this reasoning, we derogate from the perfection of Scripture, which the Theologians of the Reformed Churches acknowledge; open the door to the traditions of the Papists; and destroy the force of arguments drawn negatively from Scripture,

quod in *Fidei dogmatibus,* et rebus ad salutem necessariis *Traditiones* obtrudant *non Scriptas,* cum scripto Dei verbo *pari veneratione* recipiendas: quasi non ex se valeret *σοφίσαι εἰς σωτηρίαν,* et conferre *filiis Dei* paternam *hæreditatem Christi Testamentum,* sine affixis humanarum *Traditionum codicillis.* Eos autem qui a *Scripturis negative* disputant, de rebus ad salutem necessario *credendis* aut *agendis* intelligendos esse, siquidem uti debent, eo utantur argumento. Ceterum nunc non de *fidei regula* quæritur, sed *Conscientiæ:* nec de ejus *Regula præcipua,* sed *adæquata:* nec quid homini Christiano sit *necessario credendum* vel *agendum* ad consequendam *animæ salutem,* sed quid a viro pio et prudente *licite* fieri possit vel non *pro hic et nunc.* Summa est, *Scripturam sacram* esse *fidei* et *supernaturaliter* credendorum, actionum item *moralium,* qua ex parte *Spirituales* sunt et ad *finem supernaturalem* ordinantur, *adæquatam regulam;* esse etiam *Conscientiæ legem* et agendorum moralium *regulam præcipuam* et supremam, ita ut ubi Scriptura de re quavis aliquid in universum statuit *præcipiendo prohibendove,* non

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such as have been often used both by the ancient Fathers of the Church, and the most learned Theologians of modern times.

We reply, that the Papists derogate from the perfection of Scripture, in that they obtrude unwritten Traditions in respect to doctrines of Faith, and matters necessary to salvation: whereas the Scriptures alone are able to make us wise unto salvation. We hold that those who dispute negatively from Scripture, if they reason rightly, use such arguments, only to prove what we must necessarily believe or do, in order that we may be saved; namely, arguing that nothing which is not revealed or enjoined in Scripture is necessary for that purpose.

But here we do not inquire concerning the Rule of Faith, but the Rule of Conscience; nor concerning the principal Rule, but the complete Rule; nor what it is necessary for a Christian man to believe or to do for the salvation of his soul; but what may lawfully and prudently be done by a pious and prudent man under present circumstances.

The sum of the matter is, that Scripture is the complete Rule of Faith, and of things to be believed on supernatural grounds, and of moral actions, so far as they are spiritual, and are directed to a supernatural end; that Scripture is also the principal and supreme Rule of moral actions, so that when Scripture has commanded or forbidden anything in general, no other Law can annul this: but that Scripture is not so far the only Rule of Conscience, that what is not commanded there is necessarily unlawful.

fas sit alteri cuicunque *Legi* ex adverso intercedere: non esse tamen ita *Conscientiæ Legem* unicam, ut quod non est ibi *præceptum* continuo *illicitum* sit, quia non est præceptum. Et hactenus de *tertia Conclusione.*

XX. Sequitur QUARTA. *Propria et adæquata Conscientiæ Regula Dei voluntas est, qualitercunque hominibus revelata.* Hanc alii *Legem Dei,* alii *Legem æternam* dicunt; vocabulis pro suo cujusque arbitrio, sed eodem sensu. Hujus *Conclusionis* singulæ particulæ expendendæ sunt. Dico *primo, Voluntas Dei.* Cujus *Voluntatis,* notissima est illa distinctio, (quam tamen a Scriptoribus aliquoties animadverti aut non recte *explicari* aut non rite *applicari,*) in *Voluntatem Beneplaciti,* et *Voluntatem Signi.* Prior illa, quam *Beneplaciti* vocant, ea est, qua Deus ab æterno apud se constituit quid *ipse velit facere:* Altera quam *Signi* appellant ea est, qua nobis legem præstituit, significando quid *velit a nobis fieri.* Quarum illa proprie et univoce *Voluntas Dei est;* hæc improprie et ἀναλόγως, sic dicta. *Voluntas* illa *Beneplaciti* est ipsi quidem Deo (si de tanta Majestate κατ' ἄνθρωπον loqui fas sit,) quodammodo *agendi Lex;* semper enim ille facit quod ipsi complacitum est: sed non est a Deo nobis in *Legem* data, ut sit *Conscientiæ* nostræ *regula,* saltem quod ad *res agendas* attinet. Pertinet illa quidem aliquo modo ad *Conscientiam* respectu *perpessionum:* a posteriori scilicet, et hoc sensu, quod obligamur in *conscientia,* quodcunque contigerit id omne [p] *æquo animo ferre,* postquam nobis ex eventu constiterit id *Deum voluisse;* quia hoc dictat *recta ratio,* non debere nobis *divinæ*

p *Optimum est Deum, quo auctore omnia proveniunt, sine murmuratione comitari.* Senec. Epist. [cvii.]: *Placeat homini quicquid Deo placuit.* Id. Epist. [lxxiv.]

20. CONCLUSION FOURTH. The proper and complete Rule of Conscience is the Will of God, made known to man in whatever manner.

The parts of this Conclusion are to be separately considered: (*A*) *The Will of God,* (*B*) *made known to man* (*C*) *in whatever manner.*

(*A*) The Will of God is twofold: (*a*) The Will of God shewn in what he does, and (*b*) in what he commands.

(*a*) *The Will of God shewn in what he does* is not a Law for what we are to do: but it appertains to Conscience, inasmuch as it determines what we are to suffer; in this sense that we are obliged in Conscience to bear with resignation every infliction, when it appears, by the event, that God wills it. For this is the dictate of Right Reason,

providentiæ ordinem displicere, qui nil *velle* potest nisi quod est *rectissimum*. Reliquum est ergo, ut sit *Conscientiæ* nostræ regula *Voluntas* illa quæ *Signi* dicitur. Cum enim Deus *præcipiendo* et *prohibendo*, quid a nobis fieri velit et non fieri, significaverit: nostri est officii ipsius *Voluntati* voluntates nostras simpliciter conformare. Multa apud *Scholasticos* disputantur inutili subtilitate, an et quatenus teneatur *voluntas creaturæ rationalis conformare se voluntati creatoris, in re volita?* quum possit, quod instituto nostro et ad vitæ usum sit satis, res tota aperte et breviter uno verbo confici; nimirum, teneri nos semper *id velle, quod Deus vult nos velle.* Ut cum præcepisset *Abrahamo* Deus, ut filium *Isaacum* ipsi offerret in holocaustum, etsi Deus *voluntate beneplaciti* (uti mox ex eventu patuit) vel tum cum ei hoc faciendum præcepit id fieri noluerit: tenebatur tamen *Abrahamus* id ipsum *velle*, quia Deus *præcipiendo* significaverat se *velle* ut *Abrahamus id vellet.*

XXI. Dico *secundo*, *Voluntas Dei hominibus revelata;* quia revelatio est formalis ratio *obligandi:* Voluntas enim Dei non *obligat* eos quibus non est *revelata.* Unde *Gentes* quibus Evangelium non est prædicatum, non obligantur credere *Evangelio*, aut ad fidem in Christum. *Nemo enim tenetur ad impossibile:* impossibile est autem ei cui *Evangelium* non fuerit prædicatum, nec qui de *Christo* quicquam inaudiverit, credere *Evangelio* et *Christo*, cum lumen rationis,

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that the ordinances of Divine Providence, which must be perfectly right, ought not to displease us.

(*b*) *The Will of God shewn in what he commands* is the Rule of our Conscience. When God has by commands and prohibitions shewn what he wishes us to do and not to do, it is our business to accommodate our Wills to his Will. The simple Rule is, that we are to will what God wills that we should will. Thus when God commanded Abraham to sacrifice Isaac, he was bound to be willing to do it; though, as appeared, it was not the Will of God that it should really be done.

[There are several Scholastic technicalities referred to here which are not necessary to the argument.]

21. The Will of God (*B*) *revealed to man*, imposes the obligation: it does not oblige those to whom it is not revealed.

Hence the Gentiles, to whom the Gospel has not been preached, are not bound to believe, Rom. x. 15. And the same Apostle teaches that it is reasonable that they only who have sinned in the law shall be judged by the law, Rom. ii. 12.

Moreover it is not sufficient to produce obligation that the Will of God be revealed to any one, except it be revealed *as* the Will of God:

non possit eo pertingere; juxta illud Apostoli, [q]*Quomodo credent ei de quo non audierint? et quomodo audient absque præcone?* Nec idem Apostolus æquum esse censet, ut per *Legem judicentur* alii quam qui [r]*in Lege peccaverunt.* Imo vero nec illud per se sufficit ad inducendam *obligationem* in conscientia, *Voluntatem Dei* esse alicui *revelatam,* nisi insuper ei revelata sit *ut voluntas Dei* quoad ipsum. Adeo ut siquis ex *Gentibus* ἀλλόφυλος incidisset forte in libros *Mosis,* atque ex eorum lectione percepisset mandata Hebræo populo inibi data; non mox obligatus esset ad ea præstanda licet essent ei *revelata,* quia ad ipsum non pertinebant, sed erant illi populo *peculiaria;* et scitum est *Legem* non obligare omnes *quibus cognita* est, sed omnes et solos *quibus data est.*

XXII. Dico *tertio, Voluntas Dei qualitercunque revelata:* quia auctoritatem habet *Voluntas Dei ex se,* et non ex *modo revelandi.* Ita ut non opus habeant *Pontificii,* in Controversia *de Traditionibus,* de eo laborare ut probent *Verbum Dei non Scriptum* paris esse auctoritatis cum *Verbo Dei Scripto.* Id enim nos ultro largimur: modo, ut *de Scripto* nobis constat, constare posset pariter *de non Scripto,* quod sit indubie *Verbum Dei.* Ergo *Voluntas Dei* quocunque demum modo *revelata,* dummodo sit menti ita *sufficienter revelata,* ut ei aut actu innotescat, aut (nisi obstet

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q Rom. x. 15. r Rom. ii. 12.

Thus, if a Gentile had fallen in with the books of Moses, and had read the precepts there contained, he would not have been obliged by them, since they were peculiar to the Jews. The Law obliges, not those to whom it is revealed, but those to whom it is given.

22. The Will of God revealed (*C*) *in whatever manner* imposes an obligation; for the Will of God has authority in itself, and not from the mode in which it is revealed.

Hence the Papists, in the controversy about Tradition, have no need to labour to prove that the unwritten word of God is of equal authority with the written word. We grant this, if they can prove that it is the *Word of God,* as we believe the written Word to be.

And thus the Rule of Conscience is, the Will of God revealed in any manner, if it be so sufficiently revealed that it becomes known to the mind, or may become known, if there be not the impediment of culpable negligence.

Thus known, God's Will obliges the Conscience, so that it must conform our Will to God's Will, and direct the executive Powers to perfom it. See the quotations in the text.

negligentia culpabilis) actu innotescere possit, est *regula Conscientiæ;* obligans eam ad agnoscendam *Dei voluntatem*, eamque voluntati propriæ proponendam ut *Dei voluntatem* cui se conformare teneatur; nec id solum, sed et potentiis executivis imperare ut ad eam *Dei voluntatem* adimplendam se accingant. Recte Damascenus, [s]Τοῦτο ἀγαθὸν ὅπερ ὁ Θεὸς βούλεται: *Quod vult Deus id bonum* esse necesse est; cujus scilicet *Voluntas boni mensura* est. Lex autem Dei est ἡ τοῦτο διδάσκουσα ἐντολή, mandatum illud quo Deus nos docet suam illam bonam voluntatem. Pergit, ἐπιβαίνων ὁ τοῦ Θεοῦ νόμος τῷ νῷ ἡμῶν ἐφέλκεται πρὸς ἑαυτόν: *Accedens autem menti nostræ Dei lex*, ubi semel eam occupaverit, *attrahit ad se;* καὶ νύττει τὴν ἡμετέραν συνείδησιν, hoc est, *excitat, pungit*, subjectis quasi stimulis *urget conscientiam nostram*, ut officium suum faciat, *dictando* nimirum voluntati nostræ *Voluntatem Dei.* Atque hæc est ipsissima illa quam diximus *Conscientiæ obligatio.*

XXIII. Cujus *obligationis* vim et effectum varie exprimit Beatus Paulus. Nunc se *debitorem* fatetur; *Græcis et Barbaris debitor sum, Rom.* i. 14, quasi diceret, Cum me sciam *Voluntate Dei* sepositum ad prædicandum Evangelium *Gentibus*, sive ii *Græci* sint sive *Barbari* indiscriminatim, agnosco me utrisque hac ex parte *debitorem*: 2 *Cor.* ii. 14, ait se συνέχεσθαι, ut solent *vinculis ligati* constringi et coarctari ad officium faciendum: 1 *Cor.* ix. 16, ἀνάγκη μοι ἐπίκειται, fidei meæ, inquit, concredita est Evangelii prædicatio, ita ut non sit mihi liberum otiari et curare cutem: sed gravis mihi incumbit *necessitas Evangelizandi, quam, væ mihi, si neglexero.* Qualem sibi etiam impositam necessitatem, ita ut non possent eam excutere, senserunt ante eum et palam professi sunt, duo summi Apostoli et longo tempore individui comites *Petrus et Johannes, Act.* iv. 20, οὐ δυνάμεθα μὴ λαλεῖν: Jussit nos Deus παῤῥησίᾳ loqui; vos tacere jubetis: utris parendum sit potius, *Vosmet judicate.* A vestro *imperio* liberi esse possumus, imo et sumus; quibus *jus nullum* est in *conscientias* nostras: sed arctat nos *Dei imperium*, et ita constrictos tenet, ut nobis non sit liberum, ni perire velimus, aliter facere quam ipse jusserit.

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[s] [de Fide Orthodox. Lib. iv. cap. 23. Opp. p. 370. Ed. Basil. 1575.]

23. This obligation is variously expressed by St Paul: Rom. i. 14; 2 Cor. ii. 14; 1 Cor. ix. 16. So Peter and John, Acts iv. 20.

XXIV. Porro cum dictum sit, *Conscientiæ Regulam* proximam et immediatam esse *Lumen Mentis,* primariam et Supremam *Verbum Dei Scriptum,* propriam et adæquatam *Voluntatem Dei qualitercunque revelatam,* sive (quod idem est) *Legem a Deo rationali creaturæ impositam:* ut ista plenius intelligantur, sciendum est, triplex esse *Lumen Mentis,* prout Deus creaturæ rationali *voluntatem suam* tribus modis patefecit; *Lumen scilicet innatum, Lumen illatum, et Lumen acquisitum;* sive Lucem *Naturæ, Scripturæ, Doctrinæ.* Primum illud *Lumen* quod *Innatum* dixi, e *lege Naturæ* oritur. Indidit enim Deus in prima mundi creatione, ut creaturis brutis et inanimatis *instinctum naturalem,* quo inclinantur ad ea *facienda* quæ sunt *congrua naturæ suæ* et ejus conservativa; quæ est ipsis instar *Legis,* propterea que et Davidi *Lex* dicitur, *Psalm.* cxlviii. 6; *Dedit illis legem, quæ non præteribit:* ita et Homini *Legem* quandam *Naturalem,* naturæ suæ ut rationalis creatura est proportionatam; hoc est, sublimiorem multo, et nobiliorem, et (si fas dicere) *diviniorem,* quam quæ aliis inferioris hujus orbis creaturis, data est; quæ ipsum ad ea *agenda* impellat quæ sunt *naturæ suæ congrua* quatenus homo est, animal nempe ratione præditum; hoc est, ut verbo dicam, ad vivendum *secundum rationem.* Est autem hæc *Lex naturalis impressio* quædam, et quasi ἔκτυπον *Legis illius archetypæ* et æternæ, quæ est in mente divina; estque pars illius *divinæ imaginis* ad quam

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24. We have said (Sect. XII.), that the proximate and immediate Rule of Conscience is the Light of the Mind. We must now explain further, that this Light of the Mind is threefold:—the Innate, the Revealed, and the Acquired Light;—the Light of Nature, of Scripture, and of Learning.

The Innate Light proceeds from a Law of Nature. God has given to brute and inanimate creatures a natural instinct which impels them to do things congruous to their nature, and suited to their preservation. This David calls *a Law,* Ps. cxlviii. 6, "He hath given them a law, which shall not be broken." In like manner he has given to man a natural Law proportioned to his nature as a rational creature; and thus, more elevated, more noble, more divine, than the other: which law impels him to do those things which are congruous to his nature as man: that is, in a word, *to live according to nature.* [This, it will be recollected, is the expression used by ancient moralists, and adopted from them by Butler.]

This Natural Law is the impression and copy of an archetypal Law which exists in the Divine Mind: and is part of the image of God in

dicitur homo primum conditus et efformatus, *Gen.* i., per quam certo cognoscentes aliqua esse ex Dei creatoris voluntate *rationali naturæ nostræ* congruentia, alia autem secus; statuimus illa *bona* esse et a nobis fieri oportere, ista *mala* et propterea non oportere. Ex hac lege ortum *lumen*, in gravi illa naturæ humanæ ruina, quæ lapsum *Adæ* insecuta est admodum *obscuratum* est: unde crassæ illæ *erroris* et *ignorantiæ* tenebræ, in quibus dum hic vivimus omnes ejus posteri assidue versamur. Ita tamen sapientissime providente Deo, ut ex communi naufragio illæsius aliquanto evaserint, quam aliæ pleræque facultates. Nempe voluit Deus quasdam propositiones et *principia practica*, quas [t] κοινὰς ἐννοίας et προλήψεις φυσικὰς vocant *Philosophi*, ἐγκεκρυμμένον ἡμῖν σπινθῆρα scite *Basilius*, quasi conservatam ex tanto incendio inter medios cineres et favillas ignis divini [u] *Scintillulam*, in nobis remanere: ut haberet in intimis pectoribus nostris *voluntatis suæ* præcones. Sunt hæ κοιναὶ ἔννοιαι *Lex illa Dei*, quam Apostolus, [x]*Rom.* ii., *scriptam* ait *in cordibus* hominum; prorsus ut *Leges* civitatum aut Principis *tabulis æneis* inscribi solitæ sunt. Habent enim rationem *Legis* sive regulæ nobis a Deo impositæ; sicut *Voluntas Legislatoris* publico instrumento significata et populo proposita, *Legis* nomine censetur.

XXV. Constat autem hæc *Lex Naturalis* ex variis *Principiis practicis:* quæ tamen ad unam primam et *universalem Legem* quæ reliquas complectatur revocantur, videlicet

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[t] *Quæ in animis imprimuntur inchoatæ intelligentiæ.* Cicer. de Legg. Lib. I. [cap. 10. sect. 30. conf. Tusc. Disp. i. 24; Acad. Pr. ii. 10; de N. D. i. 17.]

[u] *Hæc tamen exigua Lucis scintillula remansit.* Calvin. Instit. Lib. IV. cap. 10. sect. 5.

[x] [v. 15.]

which man was made. By it we know that some things are, by the Will of God the Creator, congruous to our nature, and that other things are not so; of those we deem that they are good, and that we ought to do them; of the others, that they are bad, and that we ought to abstain from them.

This Natural Light was grievously obscured at the fall of Adam; but yet less ruined than our other faculties. We retain certain practical principles, "common notions" and "natural anticipations," as the philosophers call them; a "spark of the divine fire," as Basil and Calvin. These are what St Paul speaks of, Rom. ii. v. 15, as "the Law written on their hearts." They are a Law, being Rules laid down for us by God; as the Will of the Legislator made known by a public instrument is a Law.

hanc bipartitam; *Bonum esse faciendum, Malum fugiendum:* Sicut omnia præcepta decalogi ad unam *Legem universalem*, eamque bipartitam, reducuntur, illam scilicet quæ est *de Dilectione Dei et proximi.* Huic universali *legi* in *Synteresi* conservatæ subjiciuntur aliæ; ceu *Leges particulares*, ex ea derivatæ, ut *conclusiones* ex præmissis: quarum aliæ sunt de *primo* (ut loquuntur) *naturæ dictamine*, et principali illi legi proxime conjunctæ; aliæ quæ remotius ei appendent, nec nisi *secundario*, et virtute illarum propinquiorum. Quæ sunt de *primo naturæ dictamine*, simulac menti nostræ et cogitationibus offeruntur, fidem nostram statim imperant, coguntque nos eis assentiri, propter summam earum *evidentiam*. Neque enim fas est alicui de ipsarum veritate dubitare, neque possibile est quenquam, cui satis perspecta sit ipsarum vocum significatio, circa eas errare. Audito *Deum esse colendum, Injuriam nemini faciendam;* acquiescit statim animus, et sine ambage præbet *assensum*. At in posterioribus illis, propter discrepantiam quæ potest oriri ex *circumstantiis;* et *dubitare* sæpissime contingit, et *errare:* et quo *remotius* a primis illis principiis receditur, eo proclivius est in *errorem* labi. *Prima* enim et *Universalia* tanto *certiora* sunt posterioribus et particularibus, quanto sunt minus *circumstantionata*. Nam ἐκ περιστάσεων πλάνη, ut dici solet; et [y]*descendendo contingit errare.* Ejus generis præcepta sunt, *Honorandos esse parentes, Liberos alendos, Conservandam*

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[y] [conf. supra Præl. I. sect. 26.]

25. This Natural Law consists of various practical Principles, all resolving themselves into the general bipartite Law; that we are to do good, and to avoid evil; just as all the precepts of the Decalogue resolve themselves into the general bipartite Law, that we are to love God and our neighbour.

This general Law, thus retained in the Synteresis, has other particular Laws derived from it, as conclusions from premisses: some of these being among the "first dictates of nature" (as the expression is), and closely approaching to the general Law; others more remotely and secondarily connected with it.

The first dictates of nature are assented to as soon as they are presented to us. We cannot doubt or err about them, when once we know the meaning of the terms: such are the maxims, that God is to be worshipped: that we must do no wrong to any.

The latter kind of moral principles are subject to doubt and errour, in consequence of variety of circumstances and length of deduction:

proximi vitam, Depositum reddendum. Quæ utut communiter et ὡς ἐπὶ τὸ πολὺ observanda sunt, non tamen simpliciter et absolute, si res et locus (quod fieri potest) aliud postulent. Nam et *parentum jussa* præ Dei amore spernenda sunt; et justa potest esse causa *abdicandi liberos,* et *vitam* proximo *adimendi;* nec est gladius furioso *restituendus.* Affinis huic distinctioni est illa [z] *Ciceronis,* a Stoicis accepta, *Officiorum* distributio. Aliud enim est ipsis *Rectum et perfectum Officium,* quod Græci κατόρθωμα; aliud *Medium et Commune,* quod καθῆκον vocant. Quare ut *Conscientia* de rebus propositis, quantum ad hanc *Regulæ suæ* partem attinet, quæ sit *Dei voluntas* rectius et certius judicare possit; opportunum erit ea ad *universalissima* quam fieri potest *præcepta,* et ad prima illa et αὐτόπιστα axiomata revocare atque exigere. Sed de hac *Naturæ Lege,* quia ad alia properandum est, quum non liceat plura dicere; accipite quæso illa Ciceronis, quæ ex amissis ejus de Republica Libris affert *Lactantius;* " [a] *Est quidem vero lex recta ratio, naturæ congruens, diffusa in omnes, constans, sempiterna, quæ vocet ad officium jubendo, vetando a fraude deterreat.—Huic legi nec obrogari fas est, nec derogari ex hac aliquid licet, neque tota abrogari potest: nec vero aut per Senatum aut per populum solvi hac lege possumus: nec est quærendus explanator, aut interpres ejus alius: nec erit alia lex Romæ, alia Athenis; alia nunc, alia posthac: sed et omnes gentes,*

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[z] de Off. Lib. I. [cap. iii.; conf. de Finn. Lib. III. cap. vi.]

[a] Divin. Instit. Lib. VI. cap. 8.

as is implied by the two maxims: From Circumstances arises errour; and: In reasoning downwards errour enters. Of this kind are the precepts, that our Parents are to be honoured; that our Children are to be brought up; that the lives of our Neighbours are to be preserved; that what is committed to our Trust is to be restored. These are to be observed for the most part; but yet admit of exceptions: thus the command of a parent may be set aside by the command of God: there may be sufficient grounds for casting off a child, putting to death a neighbour; we are not to restore a sword committed to us by a madman. The Stoics recognized this distinction of perfect Duties and common Duties.

In order to direct our Conscience, we are as much as possible to refer our actions to those general self-evident moral axioms.

Of this general Natural Law is to be understood what Cicero says, *de Repub.* III. 22. [See *Elem. Moral.* Art. 351.]

et omni tempore, una lex et sempiterna et immortalis continebit, unusque erit communis quasi magister et imperator omnium Deus ille legis hujus inventor, disceptator, lator, cui qui non parebit, ipse se fugiet, ac naturam hominis aspernabitur; atque hoc ipso luet maximas pœnas, etiamsi cetera supplicia, quæ putantur, effugerit." Insignis sane locus, et qui hujus *Innati luminis* naturam et vim luculentissime explicat, adeo ut nihil opus sit plura in hanc rem adjicere.

XXVI. *Secundum Lumen,* quod menti *Illatum* diximus, ei ab extra advenit oriturque a *Revelatione divina:* nempe ab illa *luce,* quam Deus nobis subministravit in *Sacra Scriptura* in qua voluntatem suam humano generi uberius adhuc patefecit; nequid ei deesset adminiculi, quod ad *mores* regendos et *beatitatem* consequendam esset necessarium; quum ad ista non sufficeret *lumen internum naturale,* ut jam ante
ostendimus. Differt autem hoc *Lumen* a *Naturali,* non
1 *origine* solum, sed et *perfectione: Primo,* quia volunta-
tem Dei manifestat in his, ad quæ non potest *lumen natu-*
2 *rale* pertingere. *Secundo,* quia actus morales a *naturali*
3 *Lumine* dictatos ad *finem sublimiorem* ordinat. *Tertio,*
quia cum *Lex mentibus insculpta* a Deo tanquam *auctore Naturæ* instituta sit, *Lex ista in Verbo revelata* est ab eo instituta tanquam *auctore Gratiæ et Salutis.* Ergo ubi aut *deficit,* aut *debile* est *Naturæ Lumen* (deficit autem in his quæ sunt extra orbem suum, cujusmodi sunt *mysteria fidei;*

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26. The Second Light of the Mind is the Revealed Light: the light given in the Scripture to guide us and lead us to blessedness. This Light differs from the Natural Light, not only in its origin, but in its perfection:

1°, Because it shews the Will of God in things to which Natural Light cannot reach.

2°, Because the acts dictated by the Natural Light, are by the Revealed Light directed to a higher end.

3°, Because, the Law graven on the heart being only the work of God as the Author of Nature, the Law revealed in the Word is the work of God as the Author of Grace and Salvation.

The Law of Nature is deficient in things which are without its sphere, as the mysteries of faith; it is too weak in those moral questions which are far removed from first principles. In both these cases we must have recourse to the light of the Word. See the places quoted.

debile vero est, in his quæ ab *universalissimis præceptis* sunt aliquanto remotiora :) ad *Lumen Verbi* recurrendum est, *sicut ad lucernam in loco caliginoso fulgentem*, 2 *Pet.* i. 19 : *Ad Legem et ad Testimonium : si non loquantur secundum hoc verbum, non est eis Lux, Isai.* viii. 20 : *Lucerna pedibus meis verbum tuum, et lumen gressibus meis, Psal.* cxix. 105. De hujus *Legis perfectione* et *utilitate* si sermonem instituerem, nullus esset dicendi finis. Videte sodes in hanc rem Davidis *Psalmum decimum nonum,* ubi multa paucis et contractius; ac *Psalmum* etiam *centesimum decimum nonum,* ubi eadem pluribus et diffusius exposita reperietis.

XXVII. Porro hujus *Legis* duæ partes sunt : *Lex* proprie dicta, et *Evangelium. Legem* vero et *Evangelium* non hic intelligo in eo sensu, quo plerumque a *Theologis* sumuntur, pro binis Dei initis cum humano genere *fœderibus; Operum* scilicet et *Gratiæ :* sed popularius, pro *Scripturæ Libris Veteris et Novi Instrumenti.* Patres, ad nostrum saltem institutum non incommode, *Legem Veterem et Novam* dixerunt. Utramque Legem, et *veterem* illam *Mosis* in universum, et *novam Christi* quantum ad illam partem qua *Moralia* continet, ut inutilem prorsus, et Christiani hominis cura studiove (postquam adultæ in Christo ætatis fuerit, et *unctione Spiritus* perfusus) indignam exagitant; nec nisi *fidei legem* et *Spiritus dictamen* admittunt, nostri sæculi *Antinomi, Anabaptistæ, Enthusiastæ,* et reliqua id genus prodigiosa nomina. Quos non est nunc refutandi locus, alia agentibus : neque est id profecto multum necessarium ; quum in istiusmodi errorum monstra ita gladium jam olim strinxerit *Jacobus Apostolus*, ut videri possit spiritu quodam prophetico eorum refutationem data opera suscepisse.

XXVIII. *Legis veteris*, quæ et *Mosaica* dici solet, notissima est illa distributio, qua in tres partes distinguitur ; *Moralem* scilicet, *Ceremoniarum,* et *Judiciorum.* De quibus

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27. This Revealed Law consists of two parts ; the Law proper, and the Gospel : meaning by the Law and the Gospel, not the two Covenants, (of Works and of Grace,) but the two collections of writings : the Old and the New Law, as the fathers speak.

The Antinomians and others of our time speak disparagingly both of the Law of Moses, and of the Moral Law of Christ, as compared with the Law of Faith, and the dictates of the Spirit : but see St James.

28. The Old Law (the Mosaic Law) may be divided into Moral,

singulis multa a multis varie disputantur. Quibus prætermissis, quid de earum *obligatione* mihi sentiendum videtur, salvo tamen suo cuique judicio, breviter proponam. Dico igitur *Primo,* nullam omnino *latam a Mose legem obligare* Christianorum conscientiam, *directe, formaliter et per se;* quatenus scilicet est a *Mose* lata aut tradita. Ratio est, quia omnis *Lex Mosaica,* qua talis, fuit *positiva:* et *Lex positiva* non nisi eos *obligat* quibus *posita est.* Cum ergo *Lex a Mose tradita,* uni tantum genti *Hebræorum* posita sit, ut vel ex ipso statim exordio [*Audi Israel*] et toto insequentis sermonis charactere facile quisquis animum adverterit intelliget; non poterit ad eos qui extra illius gentis censum sunt ita pertinere, ut eo nomine quod sit a *Mose* tradita, eos *obliget.* Quod siqua pars illius *Legis* nunc obliget Christianos, (ut certe obligant *præcepta Decalogi;*) *ex accidente* id fit, et *ratione Materiæ:* non quia sic *Moses* præceperit, sed quia id quod ab eo sic præceptum est, aut est *Legi Naturæ* consentaneum, aut a *Christo* est in *Lege Nova* confirmatum.

XXIX. Dico *secundo* Legem Mosis *Ceremonialem obligasse* quidem *Judæos* in conscientia ante prædicatum ipsis *Evangelium Jesu Christi:* non item alios, nisi qui *proselyti* fierent Cultus et Religionis Judaicæ: qui cum essent duorum generum, (*Proselyti scilicet Portæ, et Proselyti Justitiæ,* Judæis dicti,) obligabantur ad præcepta ritualia observanda: pauciora quædam illi prioris generis, posterioris generis hi,

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Ceremonial, and Political. We have to give our views of the obligation of each of these portions. We say:

First, That no Law of Moses obliges the Conscience of Christians, directly, from its Form, and of itself. For the Mosaic Law is a positive Law, and a positive Law obliges those only for whom it is given, that is, in this place, the Jews: as is expressed, Deuteron. v. 1.

If any part of this Law now binds Christians, (as the Ten Commandments do,) it does so from the Matter, or from accidental circumstances; for instance, from its being a part of the Law of Nature; or from its being confirmed by Christ in the New Law.

29. *Second,* the Ceremonial Law obliged Jews till the preaching of the Gospel by Jesus Christ; but no others, except *Proselytes* (*of the Gate* and *of Righteousness,*) were obliged to observe the ritual precepts; the former Proselytes a few of the precepts, the latter, all.

From the death and resurrection of Christ to the destruction of the Temple and of the Jewish Polity, the Ceremonial Law (Augustine says) was *dead,* but not *deadly:* it had lost its obligatory power, but

pariter ac ipsi *Judæi*, universa. A Christi autem *morte* et *resurrectione*, ex quo tempore cœpit *Judæis* solis primum, dein post paulo et *Gentibus*, prædicari *Evangelium*, usque ad eversionem *Templi Hierosolymitani* et *politiæ Judaicæ*, fuisse hanc Legem (ut post [b]*Augustinum* loqui amant) *Mortuam*, sed non *mortiferam:* hoc est, amisisse quidem *vim obligandi;* non tamen fuisse ritus a Mose traditos prorsus *illicitos*, sed liberæ observationis; ita ut fas esset homini cuivis, prout res postularet, (habita interim *prudentiæ* et *caritatis* justa ratione,) ipsis pro arbitrio vel uti vel non uti. Quam fuisse *B. Pauli* mentem, ex ipsius constanti tum *doctrina* tum *praxi* manifestius est quam ut probari debeat. *Post eversionem Templi* denique a plerisque dici solere, non *mortuam* solum esse hanc legis Mosaicæ partem, sed et *mortiferam.* Quod subvereor ne ingeniosius dictum deprehendatur quam solidius: nisi dextre explicetur et cum adhibita distinctione. Non enim sunt omnia *Ceremonialia* pari loco habenda: sed illa quæ sunt *Ordinis*, et decentiæ, ab illis quæ futurum Christum *figurabant*, prudenter separanda. *Ceremonias* illas *figurativas*, quæ a Deo institutæ sunt, ut essent typi *Christi redemptoris* in carne venturi, cujusmodi fuere *Circumcisio*, *Sacrificia*, et alia nonnulla similia, certum est ex quo *Christus* omnia illis ceremoniis *typice figurata*, reipsa adimpleverit, et omnia rite esse adimpleta universo orbi per *Evangelii* sui præcones sufficienter annunciaverit, nullum jam ultra usum habere posse, proinde non solum ut *emortuas* et putidas e medio tollendas esse, sed ut *pestiferas* et exiti-

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[b] [Epist. LXXXII. sect. 18, Opp. Tom. II. p. 195. A. sqq.]

the Mosaic rites were not unlawful: they were free, to do or not to do. So St Paul, both by precept and practice teaches.

From the destruction of the Temple, it is commonly said that the Ceremonial Law is not only dead, but deadly. But this, though ingenious, requires distinction. All ceremonies are not alike: some are ceremonies of order and decency; others are figurative, having prefigured Christ; as Circumcision, Sacrifices, &c. These latter, having been fulfilled by Christ, are now not only dead but mischievous, and hateful to Christians: and especially if observed with an opinion of their necessity; as St Paul says, Gal. v. 2.

But [Mosaic] Ceremonies which belonged only to order and decency, though perhaps to be avoided, especially when they may give offence, are not necessarily unlawful; but may be regarded as part of the office of the Law as a Schoolmaster.

osas ab omni vere Christiano summopere fugiendas. Illud præsertim studiosissime cavendum ne cum aliqua *necessitatis* opinione observentur: juxta illud, *Gal.* v. 2, *Ego Paulus dico vobis, Si circumcidamini, Christum vobis nihil profuturum esse.* Ast illæ *Ceremoniæ,* quæ ad externum tantum *decorem* et cultus divini *solennitatem* quandam pertinebant, etsi præstaret fortasse non usurpari, ubi saltem subesse potest justus *Scandali* metus; non sunt tamen simpliciter damnandæ, ut *illicitæ,* hoc solo nomine quod *pædagogiæ Mosaicæ* pars fuerint.

XXX. Dico *tertio,* utut nonnulli distinguant inter *Leges Mosis Politicas* eas quæ erant *Juris communis,* quarum etiam notas quasdam assignat et *κριτήρια,* et eas quæ erant *Juris particularis;* non esse necessarium ista sic distingui: imo rotunde affirmari posse, ex iis *Legibus Mosis* quæ *Politicæ* aut *Judiciales* dicuntur, nullam omnino *Obligare Christianos* Magistratus in utramvis partem: quin ut ipsis liceat, pro arbitratu suo, et prout incolumitati et utilitati Reipublicæ videbitur expedire, eandem apud subditos suos sancire, vel non sancire.

XXXI. Dico *quarto, Legem Moralem,* a Mose traditam, hoc est, *præcepta Decalogi* obligare omnes Christianos, pariter ac Judæos, ad eam observandam. Et hoc quidem omnes, quod sciam, *Protestantes* uno ore confitentur: quo majorem nobis injuriam facit [c] *Bellarminus,* qui nos fingit *in eo ponere Christianam libertatem, ut nulli legi subjecti simus in conscientia, Moses autem cum suo decalogo nihil ad nos pertineat.* Viderit quomodo se calumnia liberet; suosque (si nos in hac culpa) eodem crimine. Agitatur enim hæc controversia inter suos *Scholasticos,* teneanturne Christiani *præceptis Decalogi,* quatenus sunt declarativa *Legis*

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[c] de Justificatione, IV. 5.

30. *Third:* Some distinguish in the Political Part of the Mosaic Law, those Laws which are of Common Right, binding all men, and those which are of Particular Jurisdiction, binding the Jews only. But we affirm roundly, that none of the Political Laws of Moses bind Christian Magistrates.

31. The Moral Law of Moses, that is, the Ten Commandments, is obligatory on Christians as well as Jews. All Protestant Divines allow this: though Bellarmine asserts that they do not. His own party are as much involved in this charge as we. There is a dispute

Naturæ tantum, an etiam quatenus sunt *Mosi* a Deo, Deique jussu *a Mose* populo Dei tradita, et in sacros Codices relata: aliis utrumque affirmantibus, aliis e duobus alterum negantibus? Est et in nostris Ecclesiis eandem reperire hac de re *sententiarum*, (si tamen *sententiarum*, et non *verborum* potius) diversitatem. Ceterum cum et illi inter se, et nos cum illis in eo quod rei caput est, hactenus consentiamus; habere *moralem legem* eam, quæ a Mose tradita est, et in *præceptis Decalogi* continetur, *vim obligandi* nostras Christianorum conscientias: fortasse non est operæ pretium, *unde* illam *obligandi vim* obtineat, multum litigare. Consultius tamen mihi loqui videntur, qui dicunt *Legem* illam *Mosis* non obligare Christianos *formaliter* et qua talis, hoc est quatenus a *Mose* tradita est; sed tantum *ratione materiæ*, quatenus declarativa est *legis Naturalis:* et proinde vim suam obligandi omnem non ab auctoritate *Mosis* eam sive ferentis sive tradentis derivare, sed ab ipso *naturalis legis* dictamine, quam Deus mentibus nostris et insevit in prima creatione, et ut voluntatis suæ monitorem in iisdem etiam post lapsum voluit permanere. Hæc de *Lege vetere, et Mosaica.*

XXXII. *Lex Nova sive Christi*, hoc est, *Evangelium* tria ista continet: *Mysteria fidei* credenda, sub quo capite complector et *Promissiones* Dei gratuitas; *Instituta Sacra Ceremonialia* et Ecclesiastica; et *Præcepta* demum *Moralia.* De quibus dico, et *Primum* de omnibus universim, *Evangelium non obligare nisi vocatos*, id est, eos solos quibus annunciatum est. Quia ubi *Lex non est, nec transgressio* esse

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among the Schoolmen, whether Christians are bound by the precepts of the Decalogue, only as being a declaration of the Law of Nature, or also as being given to Moses;—little more than a verbal dispute: but it seems to us safer to say that the Law of Moses has not, in its Form, a power of binding Christians, but only in virtue of its Matter, as being declarative of the Law of Nature. But we do not doubt that it is binding.

32. The New Law, the Law of Christ, the Gospel, contains three portions;—the Mysteries of Faith, including the Promises of God; the Ordinances of the Church; and the Moral Precepts. We say,

First; That the Gospel does not oblige any except those to whom it is announced. So Rom. iv. 15: "Where there is no Law, there is no transgression." So John. xv. 22. But it does oblige all to whom it is announced, to obedience both of Faith and of Life; to believe in Christ as their Redeemer, to obey him as their Lawgiver.

potest: moraliter autem præsertim in supernaturalibus idem est *non esse*, et *non apparere*, sive non ita sufficienter proponi, ut possit iis innotescere. Diserte Servator ipse, *Joh.* xv. 22, *Si non venissem, et locutus essem eis, peccatum non haberent:* i. e. non rei essent *spreti Evangelii.* Obligare tamen omnes quibus prædicatum est, ad obedientiam tum *fidei* tum *vitæ*, ita ut teneantur omnes quibus *Evangelium* annunciatum est, et *in Christum credere ut redemptorem*, et *ipsi ut Legislatori parere:* quod utrumque ni fecerint, in neglecti officii supplicium pœnas æternas luent.

XXXIII. Dico *secundo*, obligari Ecclesiam Christianam ad *Instituta Sacra*, (hoc est, ad *Verbi* prædicationem, *Sacramentorum* administrationem, *Ministrorum* Evangelii ordinationem, et *Clavium* tum scientiæ, tum Potestatis, exercitium,) in iis omnibus quæ ad ipsorum *essentiam* pertinent, juxta *institutionem* Christi et Apostolorum: ita ut non liceat ei, multo vero minus particulari alicui *cœtui* aut *personæ*, inde quicquam sponte vel imminuere vel immutare. Ceterum *externas* Sacrorum Institutorum *circumstantias* ita esse *liberas*, ut possit *Ecclesia* quævis particularis, pro ratione *locorum* et *temporum*, prout ex usu fuerit populi Dei, et ut *ædificationi* videbitur expedire, ita de eis statuere.

XXXIV. Dico *tertio, Novi Testamenti Moralia Præcepta* eadem esse quoad substantiam cum *Moralibus Veteris Testamenti:* et utraque ad *Legem Naturalem*, quæ in *decem præceptis Decalogi* continetur, esse revocanda; sicut omnia entia realia revocantur ad *decem Prædicamenta.* Esse tamen *præcepta Christi* in *Lege nova*, ut Sancti Ecclesiæ *Patres*

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33. *Second;* The Christian Church is bound to Christian *Ordinances;* namely; the Preaching of the word, the Administration of the Sacraments, the Ordination of Ministers of the Gospel, and the exercise of the Power of the Keys—the key of Knowledge and the key of Power. It is so bound to these Ordinances in all essential points, according to the institution of Christ and his Apostles, that it is not lawful for any community, still less for any person, to change or diminish them. But the external Circumstances of those Ordinances are free, and may be settled by any particular church, according to place and time, according to Christian custom, and with an eye to Christian edification.

34. *Third;* The *Moral Precepts* of the Gospel are the same in substance as those of the Old Testament; and all may be referred to the Natural Law, which is contained in the Ten Commandments, as all real beings may be referred to the Ten Predicaments. But the

ubique testantur, *præceptis Mosi* in *veteri Lege,* quoad aliqua, multo præstantiora. Non eo solum respectu, quod plenius, clarius et explicatius proponuntur: sed quatenus etiam altius assurgunt, et ad eminentiorem perfectionis gradum Christianos provocant; idque efficacissimis utrinque θελκτηρίοις, proposito scilicet eis ex una parte *Exemplo Christi* præterito, ex altera amplissimo *regni cœlestis* futuro *præmio.* Ut in duobus illis magnis *vitæ Christianæ officiis* vel maxime patet, *de diligendis inimicis,* et *tollenda cruce,* in lege nova imperatis. Neque enim sunt illa, sicut aliqui somniarunt, eo duntaxat loco habenda, acsi *Consilia* tantum essent *vitæ perfectioris;* quæ sint omnibus proposita quidem sub conditione præmii amplioris, neminem tamen *obligent sub peccato,* nisi siqui se *voto* ad ea observanda obstrinxerint. Quinimo vere *Præcepta* sunt, eaque proprie dicta, et *universaliter obligatoria:* ad quorum observationem, sub gravissimi peccati culpa (abnegati scilicet Christi,) et æternæ damnationis (ni resipiscant) pœna *obligantur,* quotcunque Christi fidem nomenque profitentur. Et hæc de *secundo mentis lumine* dicta sunto.

XXXV. *Tertium* restat, quod *Lumen Acquisitum* diximus. Quod sane nihil aliud est, quam ἀποτέλεσμα quoddam et incrementum illius luminis (sive *Naturæ,* sive *Revelationis*) quod ante menti inerat, quoad aliquem claritatis gradum: Cum scilicet *Voluntas Dei,* cujus cognitio mentibus nostris hactenus illuxit, (sive interne impressa in *lege naturæ,* sive externe in *verbo* revelata,) aut propria *meditatione,* aut aliena *institutione,* clarius adhuc nobis innotescit. Cujus

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precepts of Christ in the New Testament point higher than the precepts of Moses in the Old: they excite Christians to a greater degree of perfection: they do this by the most efficacious methods, the example of Christ, and the reward of eternal life. This appears in those two great Christian duties; the loving our enemies, and the taking up our cross, as commanded in the New Law. For these are not merely "counsels of perfection," but precepts of universal obligation.

35. The Third kind of Light in the mind is the Acquired Light, the Light of Learning. And this is the supplement of the other two; and is derived by meditation or by teaching from the other two, the Light of Nature and of Scripture. The two principal means thereof are the Discourse of Reason, and the Authority of the Church, including her judgment and her practice.

By Discourse of Reason particular conclusions are drawn from the

media præcipua sunt; *Discursus Rationis*, et *Auctoritas*, (hoc est, judicium et praxis,) *Ecclesiæ:* de quibus nec patitur tempus, ut multa dicam; nec ut multa dicantur, res ipsa postulat. *E Lege naturæ* deducuntur per *discursum Rationis* ad usum Conscientiæ, multæ particulares de rebus agendis *Propositiones;* velut *Conclusiones* ex suis *Principiis.* Qua in re, nisi *a primo ad ultimum* rite procedatur, proclive est *errare;* ut [d]ante dictum est. Quare diligenter videndum, ut in singulis partibus *discursus* legitimus fiat *processus;* utque posteriora quæque a prioribus apte pendeant, et ex eis necessario consequantur: ne *Conscientia* in errorem prolapsa voluntati aliud aliterve, quam oportuit, *dictet.* Periculum itidem est, ne in applicanda sacra Scriptura ad usum *Conscientiæ* similiter erretur; nisi et *Rationis* justa ratio habeatur, et *Auctoritati* sua constet auctoritas. *Pontificii,* dum in illam partem omnia studia sua conferunt, ut nequid Ecclesiæ suæ *auctoritati* decedat, parum deferunt *Rationi: Sociniani* ex adverso, dum rejecta omni *Auctoritate* fidem sola *ratione* metiuntur, id tandem agunt ut *cum ratione insaniant.* Unus utrisque *Error:* sed variis illudit partibus. Vitabitur uterque scopulus non aliter commodius, quam si cum ratione *Auctoritas,* cum auctoritate *Ratio,* scite et prudenter conjungantur.

XXXVI. Utraque quatenus in sacra Scriptura dextre *explicanda*, riteque *applicanda,* locum habere debeat; non est præsentis aut temporis aut instituti plene disserere. Agen-

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[d] [vid. supra sect. 25.]

Law of Nature for the law of Conscience; and here we must take care that the process of deduction is legitimate, that the Conscience be not misled.

Also in applying Scripture, the like care is necessary; and we must use both Reason and Authority as guides. The Papists err by deferring entirely to the Authority of their Church, and neglecting Reason; the Socinians err by rejecting Authority, and trusting to their Reason alone. The two, Reason and Authority, are to be prudently and wisely combined.

36. The use of Reason in respect to Scripture is principally twofold; *Collative* and *Illative;*—when we confer or compare different passages of Scripture; and when we infer or conclude from the language, context, or scope of a passage. But we are to be careful in doing this; and to recollect that human Reason is more to be trusted in matters practical than in pure belief; while the mysteries of faith are far more beyond our intellectual grasp than the duties of life.

dum paucis. *Rationis* circa Scripturam duplex potissimum est usus: *Collativus* scilicet et *Illativus. Collativus;* ut nempe diversa *Scripturæ loca,* ea præsertim quæ insignem aliquam invicem aut *cognationem* aut *repugnantiam* habere videntur, diligenter *conferamus: Illativus;* ut eruta e verborum proprietate, contextu et scopo, documenta debite et artificiose *inferamus.* Memores interim, humanæ rationi in *rebus agendis* tanto plus tribuendum esse, quam in *credendis;* quanto plus naturalis ingenii captum superant *fidei mysteria,* quam *officia vitæ.*

XXXVII. *Auctoritatis* autem præcipuus usus est, ad retundendam *Hæreticorum et Impostorum* audaciam, qui clarissimis *Scripturæ* testimoniis tenebras offundunt, earumque vim distinctiunculis et subtilitatibus suis eludunt. Quibus non opportunius os obturabitis, aut saltem vosmet ipsos aliosque ab ipsorum contagione illæsos efficacius conservabitis; quam si *judicium* et *praxin,* non unius aut paucorum hominum, non unius anguli aut seculi *Ecclesiæ,* sed *Catholicæ* (hoc est, diffusæ per totum orbem) omnium locorum et temporum *Ecclesiæ*, ipsorum strophis et sophismatis opponatis. Sic olim prisci illi fidei Christianæ advocati *Irenæus, Tertullianus, Vincentius,* reliqui, *præscriptionis jure* cum adversariis agendum judicarunt: quod quantum orbi Christiano profuerit, eventus docuit. Sed ista omnia, pleniore tractatione digna, memor temporis meique et vestri, omittere cogor, et quæ de *Legum humanarum obligatione* proxime dicenda sunt in aliud tempus remittere.

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37. The principal use of Authority is to confute Heretics and Impostors, who contrive to perplex the clearest testimony of Scripture. And for this purpose we must have recourse to the judgment and practice, not of one or a few men, not of some part or age of the Church, but of the Universal Church of all places and times. So Irenæus, Tertullian, Vincentius, and others, pleaded prescription against their adversaries, and with great advantage to the Church.

PRÆLECTIO QUINTA.

IN QUA DE *LEGUM HUMANARUM OBLIGATIONE IN GENERE* QUÆSTIO PERTRACTATUR.

Rom. XIII. 5.

Quare subjici necesse est, non solum propter iram, sed etiam propter conscientiam.

I. De *Obligatione Conscientiæ Passiva* tractationem
exorsus superiori Termino, hactenus progressus sum,
ut retectis ante rejectisque illis *latibulis,* in quibus inesse
aliquid præsidii ad *Conscientiæ* suæ sive *fructum* quoad jam
facta, sive *securitatem* quoad *facienda,* frustra sibi blan-
diuntur vulgus hominum (boni scilicet finis *Intentione,* et
alieni *Exempli Judiciive* auctoritate,) propriam illam et
adæquatam Conscientiæ regulam, cui se absolute et simpli-
1 citer conformare teneatur, investigarem. Ubi ostendi *Primo,*
Deum solum in *Conscientias hominum* merum et *directum*
2 *imperium* habere: *Secundo, Conscientiæ Regulam proxi-*
mam et immediatam esse *Lumen menti* pro tempore præsens,
sive (quod idem est) [a] *ultimum Judicium intellectus practici:*
3 *Tertio, Verbum Dei Scriptum* esse quidem supremam et
primariam, non tamen *adæquatam Conscientiæ Regulam:*
4 *Quarto,* propriam et adæquatam Conscientiæ *Regulam* esse
Voluntatem Dei qualitercunque revelatam, sive (quod etiam
idem est) *Legem* a Deo rationali creaturæ impositam. Dixi
insuper, ut quænam esset illa *Dei voluntas* plenius et dis-
tinctius intelligeretur, Deum Opt. Max. voluntatem suam
1 humano generi triplici medio, velut *Lumine* patefecisse. *Lege*
scilicet *Naturæ,* quæ constat ex quibusdam *Principiis prac-*
ticis per se notis, quæ et *Lex Dei Scripta in cordibus*
nostris dicitur, velut *Lumine Interno* et mentibus *innato:*
2 *Verbo Dei Scripto,* quod in sacris utriusque Instrumenti
voluminibus continetur, velut *Lumine Externo* supernatura-

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[a] *ἡ τελευταία πρότασις κυρία τῶν πράξεων.* Aristot. Eth. Nic. vii. 5.

1. Enumeration of the points established in the previous Lecture.

liter *revelato,* et mentibus *illato:* Scientia denique ex utroque 3
priore, aut propria *meditatione,* aut aliena *institutione* eruta, velut *Lumine acquisito;* cujus iterum *Media* præcipua sunt, *Discursus Rationis,* et *Auctoritas* (i. e. *Judicium* et *Praxis*) universalis *Ecclesiæ.*

II. Quin et illud submonui, (quo futuræ tractationi viam saltem aliquam præstruerem) præter *Dei Legem,* quæ *per se* absolute et vi propria omnium hominum *conscientias obligat,* idque in *summo gradu;* esse et alia nonnulla, quæ *gradum* quendam *obligandi* obtinent, sed summo illo inferiorem: ut quæ non primario et *per se,* sed secundario et *ex consequenti;* non *absolute,* sed *relative;* non vi propria, sed virtute divini alicujus præcepti sive instituti in quo fundantur, *obligant* conscientias. Quæ tametsi in eo conveniant omnia, quod quamcunque habent *obligandi* vim, eam ex toto *divinæ Legi* acceptam debeant; (*Primum enim in unoquoque genere est causa reliquorum;* nec esset divina Lex *adæquata conscientiæ Regula,* quod jam ante positum est, si extra ipsam aliquid *obligaret:* quod non ipsius virtute *obligaret:*) differunt tamen inter se singula: quemadmodum *Specie,* propter diversitatem *Materiæ;* sic et *Gradu,* quantum ad *obligandi vim.* Sunt autem illa in triplici potissimum discrimine.
Quædam enim *constanter obligant,* quorum rursus sunt duo 1
genera: unum eorum quorum *obligatio* oritur ex *potestate* alterius, ut *Leges humanæ,* mandata parentum, Dominorum,
etc. Alterum eorum quorum *obligatio* oritur ex libera pro- 2
priæ *Voluntatis electione,* ut Vota, Juramenta, Pacta, Pro-
missa, et his similia: quædam vero *ex accidenti* tantum 3

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2. Besides the Law of God, which has an absolute, proper, and supreme Obligation for the Conscience of man, there are other Laws which have a relative, derivative and inferior obligation. All these Laws agree in this, that they derive their obligatory power from the Divine Law. But they differ both in Kind, according to the difference of the Matter, and in Degree, as to the Force of the obligation.

Some are constantly obligatory; and these again are of two kinds;

Those of which the obligation arises from the power of another, as Human Laws; and the commands of Parents; &c.: and

Those of which the obligation arises from our own free act, as Vows, Oaths, Promises, Compacts, and the like.

Some are only occasionally obligatory, according to time, place, and circumstance; as the Law of not giving Offence and causing Scandal.

obligant, et velut ambulatorie, *pro hic et nunc*, secundum exigentiam circumstantiarum; Ut [b] Lex sive *Ratio Scandali.*

III. Postulat ordinis ratio, ut a *primo* illo genere ordiamur, in quo familiam ducunt *Leges Humanæ.* De quarum *obligatione* quæ a nobis dicenda erunt, ad duas hasce quæstiones revocari possunt universa: *An* scilicet *obligent conscientias* Leges humanæ; et *Quatenus obligent.* Casuum plerorumque particularium determinatio ad *posteriorem* quæstionem magis pertinet; de qua (si Deus annuerit) instituentur futuræ aliquot prælectiones: *priorem* solam hoc tempore attingemus, hanc scilicet, *An Leges humanæ obligent Conscientias:* Subjectum quæstionis non indiget multa explicatione. *Lex,* sive *primo a* [c] *legendo,* i. e. eligendo dicta *active,* ut *Ciceroni* placuit, quod Legislatores ea quæ Reipublicæ magis utilia fore judicabant *eligerent:* sive quod alii malunt, *secundo, a legendo* item, sed in alia significatione, eaque *passive* accepta, quod oporteret *Leges,* mox, ubi latæ essent, æneis tabulis incisas, aut alias perscriptas et columnis appensas proponi in publico, ut a populo *legerentur;* sive denique ex aliorum mente *tertio,* a [d] *ligando,* quod subditos ad eos observandum *obligarent:* in genere nihil aliud est quam *regula agendi subdito a superiore potestatem habente imposita.* Dicuntur autem *Humanæ leges* per oppositionem ad *Divinas.* Sicut enim *Divinæ* appellantur eæ *Leges,* quæ Dei ipsius auctoritate immediate constitutæ sunt, sive eæ *Naturales* sint, sive *Positivæ:* sic *Humanæ* dicun-

[b] [conf. infra Præl. x. Sect. 2.]

[c] *Delectus vim in lege ponimus.* Cic. de Legib. Lib. I. [cap. vi.]

[d] Aquin. Sum. Theol. 1ma 2dæ quæst. xc. [Art. 1. conclus.] Biel. [in tertium librum sententiarum Distinct. xxvii. Quæst. Art. 1, Tom. II. p. 349. ed. Brix. 1574.]

3. We must first consider the class to which Human Laws belong; in which we have to consider two questions: *Whether* Human Laws are obligatory on the Conscience; and *How far* they are obligatory. The first is here to be considered.

The subject is Laws, *Leges.* The word is derived, some say, from *legendo, choosing;* others, from *legendo, reading;* others, from *ligando, binding.* A Law is defined "A Rule of Acting, imposed upon a person governed, by a governor who has the power." As those are Divine Laws (whether Natural or Positive) which are established by the authority of God directly; so those Laws are called Human which are, by men, albeit by an authority derived to them from God, established and imposed upon their subjects.

tur eæ *Leges,* quæ, etiamsi per auctoritatem ipsis a Deo derivatam, ab *hominibus* tamen immediate imperatæ et subditis impositæ sunt.

IV. Definitur porro *Lex Humana* ab [e] Aquinate, *Rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet promulgata:* ab aliis aliter; quoad verba, sed fere in eundem sensum. Et quidem recte: siquidem convenit ista definitio *Legi publicæ,* quæ est notissima et usitatissima ejus vocabuli acceptio; et *Analogum per se positum* (ut dici solet) *pro famosiore significato stare præsumitur.* Sed in præsenti quæstione, et quod nostrum institutum attinet, sub nomine *Legum Humanarum* intelligendæ veniunt, non tantum *Leges publicæ* Communitatum (licet eæ potissimum et primario,) sed et *mandata* particularia parentum, dominorum, aliorumve quorumcunque *prælatorum* sive *superiorum,* filiis, servis aliisve *subditis* suis imperata. In hoc enim uno inter *Legem* proprie dictam et *Mandatum* discrimen præcipue cernitur, quum utrumque sit Præcepti species; quod *Mandatum* sive *Jussum* sit personæ privatæ privatam auctoritatem habentis *Præceptum, Lex* autem Præceptum commune personæ publica potestate præditæ: Cetera fere sunt paria. Certe ad *obligandi vim* et effectum quod attinet, qua de re nunc agitur, quum ex hujus Capitis versu primo constet, omnem omnino *legitimam potestatem,* quæcunque demum illa fuerit, non *publicam* modo, (de qua tamen sola fateor inibi ex instituto loqui *Apostolum,*) sed et *privatam,*

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e 1ma 2dæ quæst. 90, Art. 4.

4. Aquinas [if we put together the four propositions established in Quest. 90 of the First Section of the Second Part of his *Summa*] defines a Law to be "An Ordinance of Reason for the Common Good, promulgated by a Person acting on the part of the Community:" and others, to the same effect. This definition applies to Public Laws, which are the most common kind of Law. But in our discussion, we have to include, not only the Public Laws of Communities, but also the Commands of parents, masters, and others in authority, to children, servants, subjects. Laws, properly so called, and Commands, differ, in that *Command* is a Precept to a private person by one who has authority over him ; *Law* is a general Precept of a person who has public authority. But their obligatory power is the same: see Rom. xiii. 1, where all "the higher powers" are spoken of together: (and again ver. 7). So much of the *Subject* of the proposition, *Human Law.*

a Deo constitutam esse; et sit *mandatum patris* filio, non minus quam *lex principis* subdito, *agendi regula:* quæ de *obligatione Legum Humanarum* a me dicenda erunt, ita intelligi par est (quod semel præmonuisse sufficiet,) ut una cum publicis *legibus* privatorum etiam *mandata,* cum *politicis constitutionibus œconomica* quoque *jussa,* aliaque id genus similia (quatenus saltem fert *analogiæ* ratio) complectantur. Et hæc de *Subjecto Quæstionis.*

V. *Prædicatum* est, *Conscientiæ obligatio.* Quid sit [f]*Conscientia,* quid item in genere [g]*Obligatio,* fuit a me dudum fuse satis explicatum; nec opus est repetitu: Legem autem *obligare* cum dicimus, nil aliud volumus, quam quod Lex imponit subdito *necessitatem parendi,* ipsamque obser-
1 vandi. Sciendum est enim *Legem* ex sui natura, et quatenus *lex est,* duplicem habere vim, sive effectum necessarium: vim scilicet *dirigendi,* unde et κανὼν dicitur seu *Regula,* quatenus *notificat* subdito voluntatem superioris, et ostendit quid superior ab eo fieri velit; et vim *obligandi,* (per quam differt a *Consilio* et *Monito,*) quatenus *imperat* ut voluntati suæ a subdito mos geratur, et ipsum ita ad imperata facienda obstringit, ut si non pareat peccet. Siquidem nihil aliud est *Peccatum,* quam aberratio, sive recessus a *regula illa* sive *Lege* quam sequi debemus, ([h]ἡ ἁμαρτία ἐστὶν ἡ ἀνομία:) sicut *monstra,* propter recessum ab ordinaria *Naturæ Lege* dicuntur *Peccata Naturæ.*
2 Sciendum tamen *secundo,* Legis hunc effectum, vim scilicet

[f] Præl. I. supra.
[g] de Jur. Oblig. Præl. I. Sect. 11, etc.
[h] [1 Joh. iii. 4: conf. supra Præl. IV. Sect. 14.]

5. The *Predicate* is, the Obligation of the *Conscience.* What *Conscience* is, has been explained, *Prælect.* I.

Obligation is explained in our author's *Prælectiones De Juramenti Obligatione,* delivered the year before these. He there remarks that there are two kinds of Obligation, which have been called *Obligatio ad Culpam* and *Obligatio ad Pœnam:* Obligation under Blame, and Obligation under Penalty; or as we should now say, Moral Obligation, and Legal Obligation. [We speak here of Moral Obligation.]

First; When we say that the Law *obliges,* we mean that it imposes on the person subject to it an Obligation of obeying and observing the Law. A Law has a twofold power; it directs, by making known the Will of the Lawgiver; and it obliges, by making it blameable not to obey.

But *Secondly,* this obligatory power is founded in the Will and Power of the Lawgiver; it is these which effectively oblige, not the

obligativam, fundari in *Voluntate* et *Potestate Legislatoris:* ita ut proprie loquendo, non tam [k] *Lex* ipsa, quam *voluntas et potestas Legislatoris,* obliget *effective;* causando scilicet vel inducendo obligationem per modum *Causæ efficientis.* Dici tamen potest et solet *Lex* obligare *terminative,* scilicet ut terminus obligationis, et per modum *Causæ exemplaris:* quia est id ad quod obligatur quis, ut ex ejus præscripto operetur; sicut *artifex* in operando dirigitur ab *exemplari* sibi proposito. Sciendum *tertio,* quod *obligare Conscientiam,* est ita astrin- 3
gere aliquem ad obediendum *sub mortali* (ut loqui amant Scholæ Magistri) hoc est, sub *culpa mortali;* ut si non pareat, non solum *pœnæ temporali,* aut legibus constitutæ, aut ex arbitrio superioris inferendæ, obnoxius sit, sed et a propria Conscientia velut neglecti *officii,* contractæque inde *offensionis Dei* reus, merito redarguatur.

VI. Sensus itaque Quæstionis est, *An Leges Humanæ habeant vim obligandi Conscientias* eorum quibus feruntur, eo quo jam expositum est modo. Negant e Protestantibus [l] *Calvinus,* (ut ipsi saltem objicit [m] *Bellarminus*) [n] *Beza,* et alii nonnulli: e Pontificiis [o] *Gerson* (fatente etiam *Bellarmino,*) [p] *Almain,* et (ut aliqui volunt) [q] *Navarrus.* Affirmant e Protestantibus [r] *Musculus,* [s] *Ursinus,* et alii: et e Pontificiis, *Jesuitarum* et *Scholasticorum* plurima turba. Sunt qui distinguunt; ut [t] *David Paræus,* et alii. Et sane fatendum est, si non [u] *ἀμετρίᾳ τῆς ἀνθολκῆς,* et nimio contradicendi

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[k] [Conf. supra Præl. IV. Sect. 5.]

[l] [Institut. Lib. III. cap. xix. § 15, 16, et Lib. IV. cap. x. § 3, 4, 5.]

[m] De Laicis, Lib. III. cap. ix.

[n] [In notis ad cap. xiii. ad Rom.]

[o] [De vit. Spirituali, Lect. iv.]

[p] [De Potest. Ecclesiast. Quæst. I. cap. x.]

[q] [h. e. Martinus ab Azpilcueta Commentarr. cap. xxiii. Opp. Tom. III. p. 207, sqq.]

[r] [In Commentar. in Epist. ad Rom. cap. xiii. p. 228, sq., ed. Basil. a. 1502.]

[s] [In Exposit. secundi præcepti Decalogi, Opp. Tom. I. 696. A. sqq., ed. Heidelberg. a. 1612.]

[t] In Cap. xiii. ad Rom. [DUB. VII. Opp. Tom. II. p. 301, sqq. ed. Francof. a. 1647.]

[u] [Ex S. Basilio, Epist. ix., Opp. Tom. III. p. 90, ed. Bened. Vide de interpret. Suiceri Thesaur. Ecclesiast. s. v. ἀμετρία, Tom. I. p. 227.]

Law simply: but the Law may be said to *oblige* us, as being the Term to which we are bound, the Exemplar which we are to copy.

And *Thirdly,* to oblige *our Conscience,* is to bind us so that if we violate the Law we are not only subject to temporal punishment, but have transgressed our duty, and offended against God.

6. The Question then is, Whether Human Laws oblige the Conscience, in the sense of the terms now explained. The negative

studio utrinque peccatum esset, jamdudum e medio tolli potuisse istam controversiam. In istiusmodi disputationibus subinde mihi veniunt in mentem, quæ apud [x] *Aristotelem* adolescentem me legisse memini, δῆλον ὅτι πῶς μέν ἐστι, πῶς δὲ οὔ: ubi disputat, *an Principia sint contraria; An detur Infinitum;* etc. Et διαιτητοῦ δεῖ (siquidem est illa vera illius loci lectio), *Arbitro* nimirum potius opus est, qui utramque sententiam (*specie* magis pugnantem quam *re*) in unum conciliet; quam *Judice,* qui dum statuit alteram partem, alteram damnet. Quod fortassis in non paucis earum *controversiarum,* quæ in orbe Christiano magna cum animorum contentione stylique acrimonia jamdiu inter partes agitantur, obtineret; si tam *studio pacis* et caritatis, quam *odio partium* agerentur, qui *Theologica* tractant. Equidem in præsenti quæstione, quantum ex paucorum eorum lectione, quos mihi et alias occupato, et parum firmæ valetudinis, in hac temporis angustia consulere licuit, judicare possum; demptis utrinque quæ expressit contentionis æstus, neutri mihi pessime sentire videntur. Existimo tamen eos qui *affirmative* definiunt, (ut aperte quid de tota re sentiam eloquar) et commodius ad *vitæ* institutionem, et cautius tutiusque ad vitandum *errandi* periculum, et ad *formam sanorum verborum* propius locutos, quam qui *negative.* Ceterum, ut quid hac in re (ut mea fert sententia) statuendum sit distinctius vobis ob oculos ponam; rem universam quam potero breviter et dilucide quibusdam *Conclusionibus* complectar; sententiam meam, ubi opus est, aliquot *rationibus* confirmabo, et quæ afferri solent ex adversa parte *objectiones diluam.*

VII. Conclusio Prima. *Leges humanæ injustæ non obligant ad obediendum.* Manifesta res, modo verba recte intelligantur. Nequis tamen ea secus quam par est interpre-

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[x] [Φυσικ. ἀκρόασ. Lib. III. cap. vi. ed. Bekker.]

is maintained by Calvin, Beza, Gerson, Almain, Navarrus: the affirmative, by Musculus, Ursinus, and the Schoolmen and Jesuits in general.

Sanderson holds the affirmative, but with limitations, which he expresses in certain Conclusions; which are to be enunciated, supported by reasons, and the contrary objections resolved.

7. First Conclusion. Unjust Human Laws do not oblige to obedience.

This Sanderson says, is self-evident, if the words be rightly under-

tetur, animadvertendum est, posse *Legem* aliquam *injustam* dici; vel ratione *Finis, Modi,* aut *Circumstantiæ* alicujus Legi ipsi extrinsecæ, vel ratione *Materiæ* sive *Objecti* ipsius Legis: Distat enim, impereturne quod manifeste *injustum* est; an quod alias fortasse non sit injustum, *injuste* tamen imperetur. Tollit obligationem id *injustitiæ* genus, quod Legi ipsi *per se* adhæret respectu *rei imperatæ:* non tollit id genus, quod *extrinsecus* ei advenit et *ex accidenti,* vitio scilicet imperantis. Esto enim Princeps lege lata *juberet* aliquid fieri quod non esset *ex se* factu *illicitum,* vel fieri *prohiberet* quod non esset *simpliciter necessarium;* nulla tamen justa subesset causa cur aut illud *juberet,* aut hoc *prohiberet,* sed aut *turpis lucri* cupiditate, aut exercendæ *tyrannidis* mera libidine, aut pravo alio quocunque animi *affectu* adductus: *injusta* quidem esset Lex *ex parte imperantis;* subditus tamen ad parendum nihilominus obligaretur. Ratio est, quia *injustitia* illa tenet se *ex parte imperantis* tantum, non autem *ex parte rei imperatæ.* Adeo ut, quamvis non possit *Princeps* sine peccato ejusmodi legem *ferre,* poterit tamen *subditus* quod ea lege imperatum est sine peccato *facere.* Et quicquid potest ab ipso sine peccato *fieri,* id omne *subditus* si postuletur ex *obedientiæ debito* tenetur præstare. Qua *intentione* quove *consilio* Princeps legem tulerit, ipse viderit: id mea qui *subditus* sim nihil interest, nec siquid ille ea in re peccaverit, mihi imputabitur: Imputabitur, modo nihil *imperetur* nisi quod a me *licite* fieri poterit, si officio meo defuero, nec paruero.

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stood. But to understand it rightly, we must consider that a Law may be unjust either by reason of the End, Manner, or some Circumstance extrinsic to the Law, or by reason of the Matter or Object of the Law itself. It may be the command of an unjust thing, or it may be a thing unjustly commanded. The material or intrinsic injustice of the Law destroys the obligation; the accidental or extrinsic injustice does not.

Thus, if a Sovereign should command something not (morally) unlawful, or forbid something not (morally) necessary; doing this without good reason, or for the purpose of gain, or even through tyrannous caprice, or evil passion; the command would be unjust in him, but the subject would be bound to obey. The Prince sins in issuing such a command; but the Subject sins in disobeying it. The Subject is to obey, whenever he can without sin: the sin of the Prince in commanding will not be imputed to him: the sin of disobedience, if the thing commanded be morally lawful, will be imputed.

VIII. Quin et illud insuper adjicio, si Lex ipsa etiam ratione *Materiæ* sive *Objecti* sit forte *injusta* et subditum gravet, ut exempli gratia, si imperet pensionem *gravioris tributi* quam res postulat, non tamen propterea continuo solvi *obligationem.* Sed hic iterum opus est distinctione. Potest enim aliquid esse *injustum,* vel eo solum nomine quod sit *perpessu iniquum,* vel eo quod sit etiam *factu illicitum.* Illo modo si *injustum est,* quod Lege imperatur, hoc est, si *iniquum* sit tantum et non *inhonestum,* et tamen fiat; unius *imperantis* culpa est: tam abest a culpa qui *obsequitur* imperio, ut omnino peccaret si *non obsequeretur.* At posteriori modo siquid imperetur *injustum,* hoc est, si quod postulatur sit non solum *grave perpessu,* sed etiam *factu turpe,* et tamen a subdito fiat; utrinque peccatur: a *prælato,* quod *rem iniquam* postulaverit; a *subdito,* quod rem *illicitam* effecerit. Sensus ergo Conclusionis est, ubicunque *Lex imperando* aliquid *prohibet* fieri quod est ita *necessarium* ut non possit a subdito omitti sine peccato, vel *imperando jubet* aliquid fieri quod est ita *illicitum* ut non possit ab eodem sine peccato fieri, *Legem* illam *non obligare* in Conscientia.

1 IX. *Ratio Prima,* quia *rei illicitæ* (ut [y] alias fuse osten-
2 dimus) *nulla potest esse obligatio. Secunda;* quia (ut ibi etiam dictum est) *Obligatio prior præjudicat posteriori,* ita

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[y] de Juram. Obligat. Prælect. II. Sect. 13.

8. Further: Even if the Law be unjust as to its Matter and Object, and oppressive to the Subject; for example, an unnecessarily heavy tax, the Obligation is not destroyed necessarily. We must here distinguish between what is merely unjust suffering, and what is immoral doing. If the thing commanded be of the former kind,—an iniquitous infliction, not a wicked act in the sufferer,—the fault is in him who gives the command. It is no crime to obey; it is a fault not to obey.

But if the thing commanded be morally bad, the doing it is a sin in both parties,—him who commands, and him who obeys.

And thus, the meaning of our Conclusion is, that Human Laws which prohibit what is morally necessary, or command what is morally unlawful, do not bind the Conscience.

9. *First Reason:* Because a thing morally unlawful cannot be a matter of Obligation. For Obligation is the bond of the moral law. See the Author's *Prælect. de Juram. Obligat.* as quoted.

Second Reason: Because a former Obligation bars a later: but we have a former Obligation to do what is morally necessary, and to avoid

ut ei non possit superinduci *Obligatio* nova contraria. At Lex *jubens rem illicitam* ut homicidium, perjurium, sacrilegium, etc., aut *prohibens officium necessarium*, ut cultum veri Dei, debitum Principibus et parentibus obsequium, etc. id exigit quod contrarium est *obligationi priori*, qua virtute præcepti divini subditus jam ante constrictus tenebatur. Proinde Lex humana istiusmodi non potest inducere subdito *obligationem*. *Tertia:* quia nemo potest simul *obligari ad* 3
contradictoria. Sed si *lex* ejusmodi esset *obligatoria*, obligaret ad id *faciendum*, ad quod *non faciendum Lex Dei* eodem tempore obligaret: *facere* autem et *non facere* sunt contradictoria. *Quarta;* ab exemplis piorum, qui ex fidei 4
suæ principiis sic instituti semper fuerunt, ut *Imperatorum jussa* (tametsi *gravia*, si non *inhonesta*,) alacri animo capesserent, obirent, exsequerentur : at siquid abs eis vel *lege* lata exigeretur, quod esset *contra fidem* aut *bonos mores*, vel cum *honesto* quomodolibet pugnaret, palam et constanti animo imperium detrectarent, et præ Dei timore *Leges* et instituta quævis humana contemnerent. Lege lata *Babylonica* ut audito musico concentu aureum grande simulacrum quod erexerat potentissimus Monarcha, singuli adorarent, idque severissima proposita siqui secus facerent pœna; non se passi sunt ea *Lege obligari* tres [z] *Hebræi* adolescentes: Quia scilicet jubebatur *res illicita*, cultus Idoli. Lege itidem *Persica* lata, nequis per aliquot dies a quoquam Deo vel homine præterquam ab uno *Persarum Rege* quicquam peteret, non paruit [a] *Daniel*, sed eo ipso quo solitus est more, statis temporibus Deum precatus est. Et prohibiti *Petrus et Johannes* ne

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[z] Daniel. cap. iii. [a] Ibid. cap. vi.

what is morally unlawful: and therefore no Human Law can remove this Obligation.

Third Reason: Because no one can be obliged to contradictory acts at the same time. But if such Human Laws were binding, they would bind a man to do, that which the Law of God binds him not to do.

Fourth Reason: We have the examples of pious men, who have cheerfully performed the Commands of Governors, however burthensome, if not sinful; but if anything was commanded which was contrary to faith, or modesty, or virtue, they stedfastly resisted it, and set at nought all human power, in conflict with the Law of God. So the three Jews: Dan. iii. So Daniel himself: Dan. vi. So Peter and John: Acts iv.

ultra loquerentur in nomine Jesu, non solum non paruerunt imperato, sed et fidenter responderunt, [b] *Utrum justum sit coram Deo vobis potius obaudire quam Deo, ipsi judicate.* Nimirum quia utrobique quæ *prohibebantur* erant *res necessariæ:* illic cultus veri Dei, hic concredita ipsis Evangelii prædicatio.

X. Conclusio Secunda. *Lex humana prohibens* rem simpliciter *malam*, ut furtum, adulterium, sacrilegium ; aut *jubens* rem *bonam et necessariam*, ut cultum Dei, solutionem debiti, honorem parentum ; inducit *novam obligatio-*
1 *nem* in conscientia. *Ratio prima ;* quia posita *causa* propria, sequitur *effectus* ejus necessarius, nisi aliunde impediatur. *Obligatio* autem est *Legis effectus* ita necessarius, ut aliqui existimarint ab hoc *ligandi* effectu ipsum *Legis* nomen ([c] sicut ante dictum est) originem suam traxisse; nec videtur hic aliquid assignari posse, quod istius effectus consecutionem im-
2 pediat. *Ratio secunda,* a minore ad majus. Obligat omnium confessione *Lex prohibens* rem alias *licitam,* aut *jubens* rem alias *liberam:* ergo multo etiam magis *prohibens* rem *illicitam,* vel *jubens* rem *necessariam.* Est tamen quod utrique huic rationi ex adverso opponi posse videtur: Scilicet, *Non esse multiplicanda entia sine necessitate,* obligari jam ante unumquemque vi *Legis divinæ* ad faciendum quicquid est *necessarium,* et ad non faciendum quicquid est *illicitum,* quæ obligatio excludit eam quam ex *humana Lege* consequi sup-

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[b] Act. Apost. cap. iv. [v. 19.] [c] [supra Sect. 3.]

10. Second Conclusion. A Human Law prohibiting a thing *simply* bad, as theft, adultery, sacrilege; or commanding a thing good and morally necessary, as the worship of God, the payment of our debts, the honouring our parents; induces a new Obligation upon the Conscience.

First Reason: Where the cause exists, the effect follows, except there be some impediment: but the Law is cause of the Obligation: Therefore, &c.

Second Reason: It is allowed that a Law obliges, which prohibits a thing otherwise allowable, or commands a thing otherwise indifferent: therefore *à fortiori,* a Law which prohibits a thing which is bad, or commands a thing which is morally necessary.

Objection. It may be said that ideal Essences (as Obligations) are not to be multiplied without reason (and will interfere with each other): and that there is already an Obligation, in virtue of the Divine Law, to do what is necessary, and to avoid what is unlawful, which Obliga-

ponimus, ut superfluam, sicut præexistens in vase pleno *liquor* impedit infusionem *novi liquoris:* Nec videntur admitti posse *duæ obligationes* ad eandem rem in eadem *conscientia* magis quam *duo accidentia* ejusdem speciei in eodem *subjecto.* Sed respondeo, dici quidem solere et quidem vere, *Obligationem priorem præjudicare posteriori,* (quo argumento et ipsi paulo ante usi sumus in firmamentum superioris *Conclusionis;*) sed hoc dictum in iis tantum *Obligationibus* locum habere, quæ sunt invicem *destructivæ,* et quarum effectus tantam habent inter se contrarietatem et repugnantiam, ut posita alterutra necessario tollatur reliqua: hoc tamen non impedire quin *obligationi priori* accedere possit *altera,* quæ sit ejusdem rationis, et possit cum ea consistere. Neque est simile quod de *liquore* affertur in vase pleno: quia impedimentum ne vas plenum *novum liquorem* admittat, non stat *ex parte liquoris,* sed provenit ex *incapacitate vasis* et natura *Loci,* qui non potest simul recipere plura corpora. Et *accidentia* nihil prohibet esse in eodem subjecto ejusdem speciei *plura,* modo sint *relativa,* non *absoluta:* ut in *Socrate,* supposito quod *decem* haberet *filios, decem* essent quoque *paternitates:* Quia *relationes* multiplicantur ad multiplicationem suorum *terminorum:* et modo diximus *Legem* obligare ad modum *termini.* Ergo quot sunt *Leges,* (quum sit omnis *Lex,* ex natura sua et quatenus *Lex* est, inductiva *obligationis,*) totidem etiam erunt *Obligationes,* illis ut suis *terminis* correspondentes. Neque

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tion excludes that which we would deduce from Human Laws; as in a full vessel, the liquor already there excludes any more poured in. It may be said again, that there cannot be two Obligations to the same thing in the same Conscience, any more than there can be two Accidents of the same kind in the same subject: thus Socrates cannot be, in the same sense, both white and red.

Answer. The maxim that Obligations (are not to be multiplied, and) will interfere with each other, is true only when Obligations are mutually destructive; and does not prevent one obligation being confirmed by another of the same kind, consistent with the former.

And as to the full vessel, the impediment to the addition of new liquor is not on the part of the liquor, but on the part of the vessel, and the special nature of *place,* whereby two bodies cannot be in the same place at the same time. [And therefore is not to be urged against *obligation* of which the nature is not bounded by any such axiom.]

Nor is it true, that there cannot be several accidents of the same kind in the same subject, provided they be relative accidents,

vero hoc est *multiplicare entia sine necessitate:* quia multiplicatis *causis*, necesse est multiplicari *effectus* illarum causarum. Imo hoc ipsum, ne cui incredibile videatur, aut quod huic persimile est, quotidie contingere videmus, et in *Naturalibus* et in *Moralibus*. Nam et sensui evidens est, posse aliquem ad columnam duobus vel *tribus vinculis* alligari: ut *Petrus*, *Act.* xii. 6, *cubavit δεδεμένος ἁλύσεσι δυσί.* Nec potest cuiquam esse dubium, quin possit aliquis ad id officium quod ipsi ex *lege divina* præstandum incumbit, non obstante illa obligatione, denuo se obligare *voto*, vel *juramento*, vel *promissione*. Quemadmodum [d] vovit *Jacobus Patriarcha, unicum sibi Deum fore Jehovam*, et [e] *David juravit justa se Dei judicia custoditurum.* Et quotquot sumus *Christiani*, cum sacro fonte tingeremur, novo nos *fœdere baptismali* obstrinximus ad *fidem* in Christum; ad *abrenunciandum* Satanæ, Seculo, Carni; ad *observanda* Dei mandata: ad quæ tamen omnia præstanda nos ante *obligatos* fuisse certissimum est.

XI. Conclusio Tertia. *Leges humanæ*, (sive illicita imperentur, sive necessaria, sive adiaphora,) *latæ a persona vel communitate non habente legitimam potestatem, non obligant in conscientia.* Ut si *Prætor urbanus* Leges ferret huic *Academiæ;* aut vicinus *paterfamilias* servum meum juberet boves meos jungere, segetes suas occare, etc. Aut si

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[d] Gen. xxviii. 21. [e] Psal. cxix. 106.

not absolute. Thus if Socrates had ten sons, he would have in him ten paternities. For relations are multiplied in the same measure as the *terms*, between which they exist, are multiplied. And, as has recently been said, Law produces an obligation (Art. 5) as the *Term* to which we tend. Therefore how many Laws, so many Obligations.

Nor is this to multiply Essences without necessity: for if causes be multiplied, their effects must be multiplied: and this is true commonly in matters natural, as well as moral; as Peter was bound with *two* chains.

And so to duties, which are incumbent on us by the Divine Law, we may be further bound by vow, oath, or promise; as Jacob's vow, Gen. xxviii. 21. David's oath, Ps. cxix. 106; and our Baptismal vow.

11. Third Conclusion. Human Laws (whether commanding things unlawful, or necessary, or indifferent,) made by a Person or Community not having legitimate power, do not bind the Conscience.

Thus, if the Mayor of the town makes laws for the University: or if my neighbour orders my Servants: or if a body of insurgents,

collecta hominum seditiosorum manus in aliquo *Angliæ Comitatu*, (quod in agro *Norfolciensi*, Edvardo sexto regnante sub *Ketto* duce, alibique alias multoties factum est) incolis certam pecuniæ summam, aut operarum servitutem sibi indebitam publicatis edictis imperaret, eosque *vi et armis* ad imperata facienda cogerent; utut eis forte liceret (posito quod resistendo pares non essent) *imperata facere;* ejusmodi tamen *jussa* neminem certe ad ea observanda *obligarent in conscientia.* Tum quia ejusmodi *Leges*, nomine tenus duntaxat, et *æquivoce Leges* sunt, re autem [f] vera *Violentiæ magis quam Leges:* Et *causa æquivoca* non infert effectum; sicut non obligat partes lata a *non-Judice* sententia. Tum quia *vis obligandi* (ut etiam modo [g] dictum est) non causatur *effective* ab ipsa *Lege*, sed a conjuncta cum *potestate Legislatoris* voluntate. Ergo ubi deficit *Potestas*, deficit et *causa* proprie *efficiens* istius obligationis: et *causa propria* deficiente, *effectum* ejus deficere necesse est. Quod ipsum ex hoc ipso *Apostoli* loco colligere licet, qui necessitatem τῆς ὑποταγῆς, debitum scilicet *obedientiæ* ex parte *subditi*, deducit ἀπὸ τῆς ἐξουσίας, a *Potestate Jurisdictionis* in *prælato :* unde efficitur non teneri quenquam ad *parendum* ei, qui non habet *jus imperandi.*

XII. Si dicas, colluviem ejusmodi qualem jam dixi hominum factiosorum habere *imperandi potestatem*, quia possunt eos in quos imperium exercent ad faciendum *imperata cogere:* Respondeo, *Potestatem* de qua loquimur, et a qua pendet *Obligatio*, non esse *potestatem* illam quam Græci δύναμιν vocant, hoc est, *potestatem*, (*seu potentiam* potius, qua voce libentius in ea notione plerique utuntur) *physicam*, sive *de facto*, per quam quis *potens* est id quod intendit ita effectui

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[f] Aquin. Sum. Theol. 1ma 2dæ, Quæst. 96, Art. 4. conclus.

[g] [supra Sect. 5.]

(as in Kett's insurrection,) demand money and labour of the citizens by force and arms; though men may obey because they are not strong enough to resist, such commands are not binding in Conscience.

For such laws are not truly Laws, but rather acts of violence.

And the effective Power of Obliging is not in the Law but in the Lawgiver, and fails when he has no authority. And so Rom. xiii. 5, the Apostle says we must be *subject* to the *Powers that be*, to those who have Authority.

12. *Objection* 1. You may say that a mob like this has Power.

To this we answer, They have *Strength* (δύναμις), but not *Authority* (ἐξουσία,) upon which Obligation depends.

dare, ut finaliter non impediatur: sed eam *potestatem* quam ἐξουσίαν vocant, hoc est, *potestatem legitimam* sive *de jure*, quæ scilicet ei competit jure aliquo *Naturæ*, *Gentium*, aut *Civili*, ratione personæ quam gerit, et per respectum ad eos qui ipsi quoquo modo subsunt. Hanc ἐξουσίαν in præsenti argumento ita premit *Apostolus*, ut eam trium commatum spatio *quinquies* nominaverit: de δυνάμει interim ne γρὺ quidem.

XIII. At certum est, inquies, eos qui *Romæ* principatum gerebant illo Apostolorum ævo, nec *hæreditario* jure, nec liberis *populi suffragiis*, nec legitima alias *vocatione* ad imperii culmen conscendisse, sed aut *vi* aut *dolo* aut *militari* tumultu imperium usurpasse: quibus tamen et ἐξουσίαν, ut legitimis magistratibus, disertim tribuit Apostolus; et subditis parendi necessitatem, (ἀνάγκη ὑποτάσσεσθαι), imponit, idque non supplicii metu tantum, sed et *propter conscientiam*. Primos illos post eversam Rempublicam *Imperatores Romanos* sane fatendum est non optimo jure imperium adeptos; habuisse tamen *jus gladii* et *legitimam* ἐξουσίαν, sive *jurisdictionem*, cui subesse deberent quotquot *Romanæ* ditionis essent homines, fatendum est pariter. Neque enim quisquam erat singularium hominum, qui eam *potestatem*, ut sibi potiore jure debitam, vindicare posset; et *Senatus populusque Romanus* penes quem novissime et ab aliquot retro seculis summa fuisset potestas, qua metu qua obsequio, juri suo utcunque cesserant, eosque qui imperium *malis artibus* quæsivissent, pro suis tamen *legitimis principibus* agnoverant. Hoc dato, quod mihi certe omnino concedendum videtur, de *obediendi necessitate* nulla potest reliqua esse dubitatio. At in casu dubio,

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13. *Objection* 2. You may say that those who had the sovereign power at Rome, at the time when the Apostles lived, had not acquired it either by hereditary right, or by the free choice of the people, or by any other legitimate vocation; but by craft or military force; and yet these are the 'powers that be' of whom the Apostle speaks, and to whom he says we must be subject for conscience' sake.

To this we answer; The first emperors, though their right was not the best, had the right of the sword, which was a legitimate authority among the Romans. [*Imperator* is a military commander]. Moreover they were acknowledged by the Roman Senate and People, the source of legitimate power. Hence, for the Romans, there could be no doubt; the case is not equally clear for Christians, as to obeying those who govern *de facto* and not *de jure*.

quod sit Christiani hominis officium, an et quatenus obligetur *in foro conscientiæ* tempori cedere, præsentibus moribus se accommodare; *legibus*, edictis, aliisque jussis ejus qui *de facto*, nullo tamen *jure* (suo saltem judicio) summæ rerum præest, obtemperare: non peræque facile est dijudicare; nec prudentis est in re tam gravi, tam ardua, quicquam temere definire.

XIV. Nihil itaque statuo. Ne tamen aut officio meo, aut vestræ saltem expectationi defuisse existimer, si quam in medium produxeram quæstionem intactam prorsus relinquerem; quid mihi de tota hac re serio cogitanti visum est rectæ rationi maxime consentaneum, (nisi si forte, ut in istiusmodi deliberationibus fere contingit, aliud suadeant περιστάσεις,) paucis exponam. Dico igitur *primo*, Eum qui *de facto* summum in 1
civitate imperium obtinet, etsi *malis artibus* potestatem illam sibi quæsiverit, civi tamen pro *legitimo principe* habendum esse, eique ut legitimo principi *ex conscientiæ obligatione* esse obtemperandum, modo nulla subsit in contrarium justa dubitandi ratio. Videtur autem ea sola esse in hoc casu justa et idonea dubitandi ratio, cum civi aut certo constet, aut saltem valde sit probabile, aliam esse aliquam *personam* cui *summa potestas* meliori jure debeatur. Hoc ni fuerit, non poterit civis bona conscientia *possidentis* imperium detrectare. Neque enim ad *civem* pertinet (ordinarie) *quo jure possideat* qui possidet curiosius inquirere: sufficit ei ad conscientiæ securitatem quod *de facto possideat*, nec sit alius quispiam (saltem quod ipsi cognitum sit,) qui *de jure possidere* debeat. Huc facit, præter jam dicta de *Romanis Imperatoribus* oppressa Repub-

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14. We must, however, try to give a decision to the general case, capable of being modified by circumstances. We hold then:

First, that he who is the Ruler *de facto*, although his power may have been obtained by evil acts, is to be held by a citizen as the legitimate Sovereign, and to be obeyed as a matter of conscience, except there be some just adverse ground of doubt. The only just and proper ground of doubt is, when it is either certain or probable that there is another person with a better right to the sovereignty. For, in ordinary cases, a citizen must not reject the authority of the person who is in possession, or inquire too curiously by what right he possesses. It is sufficient for him to know that he possesses *de facto*, and that there is no one, at least no one that he knows, who is the possessor *de jure*. This is exemplified both in the Roman empire, as already stated, and in the history of the kings of Israel; most of whom

lica rerum potitis, universa pene *Israeliticorum Regum* historia. Quorum plerique, nullo *juris* prætextu nixi, sed *vi injusta*, et *nefario scelere*, regnum consecuti, simulac (extincta funditus *regia* antecessorum *sobole*, nequis superesset qui in jura paterna aut avita succederet) thronum conscendissent, *regnum* deinceps quasi pleno et *proprio jure* administrarunt: præstitaque est eis a populo, haud secus ac si *optimo jure* imperium obtinerent, *obedientia*. Neque vero id ipsis vitio versum uspiam legimus: quin potius suadebat *recta ratio* sic fieri oportere. Intererat nimirum *salutis publicæ*, ut esset qui ad Reipublicæ gubernacula sederet: nec civium rerumque suarum incolumitati satis alias prospectum fuisset, si cujus *jure* (*possidentis* utique) nullum esset *potius*, ejus non haberetur *jus potissimum*. Et *ex jure gentium*, quæ nullius sunt transeunt in *jus occupantium*.

2 XV. Dico *secundo*, In regno *hæreditario*, ubi inter duos aut plures *petitores* jus dubium est; *lite* adhuc *pendente*, et interim dum res aut amica *tractatione* aut *bello* cernatur, boni civis officium esse, ei qui in imperii possessione sit, ut *legitimo principi*, parere. Cujus casus occurrunt passim in historiis plurima exempla. Inter illustriora sunt, quæ contigerunt inter competitores *regni Lusitaniæ* complures post mortem *Sebastiani Regis; et regni Scotiæ* etiam (sex ad minimum) post mortem *Regis Alexandri* de regno lites; et inter nobilissimas familias *Eboracensem* et *Lancastrensem* de successione *Anglicani regni* acris admodum et diuturna contentio.

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obtained the crown by fraud and violence, and were then obeyed by the people as lawful kings; nor are the people anywhere blamed for this.

This is reasonable; for the public safety requires a governor; and there could be no public safety, if a ruler who had as good a right as any (namely the right of possession,) were not deemed to have the best right. By the Law of Nations, things with no owner become the property of the person who takes possession of them.

15. *Secondly:* In an hereditary monarchy, when there are several claimants of the crown, it is the duty of a good citizen, *lite pendente*, before the point is settled by treaty or war, to obey him who is in possession of the sovereignty, as the legitimate sovereign. Examples are found in the competition for the throne of Portugal after the death of King Sebastian; in the rivals for the crown of Scotland (six or more) after the death of King Alexander; and the wars of York and Lancaster in England. In all such cases, by the general consent of nations, possession is a claim to obedience.

Omnium toto orbe populorum consensu, *jura* ubique favisse certum est *possidenti:* et in istiusmodi casibus obtinuit semper celebre illud jurisconsultorum pronunciatum, [h] *In rebus dubiis melior est conditio possidentis.*

XVI. Ceterum, ubi quis *pulso* vi et armis *legitimo principe* regnique hærede, vel ita *oppresso* ut jus suum persequi non possit, eo tamen adhuc superstite, imperii habenas arripit, et se pro *Rege* gerit, quum sit verius *regni invasor* quam *Rex;* ita ut jam non sit *ultra jus dubium*, sed *aperta injuria:* si quæris quid in hoc casu bono civi faciendum esse censeam qui *fidelitatem* legitimo principi fortasse *juravit;* aut si non juravit, non minus tamen ei debet, quam si juratus esset: Dico *tertio*, mihi videri, non solum licere bono civi, 3
legibus ab eo qui summum imperium *de facto* sed *non de jure* possidet latis parere, aliaque ab eo *imperata* (modo non sit *factu turpe* aut *injustum* quod imperatur) facere: verum etiam, postulante humanarum rerum conditione, eo necessitatis deveniri posse, adeoque sæpissime deveniri, ut ni sic fecerit, defuisse officio suo existimandus sit. Atqui [i] dictum est modo, *Leges* a non habente *legitimam potestatem* latas *non obligare* in conscientia. Dictum sane, et quidem vere dictum: nec, ut opinor, ista pugnant. *Obligetur* licet subditus ad faciendum quod lege cavetur, non tamen *legi* obligatur, sed *sibi et patriæ. Legi*, quæ vere Lex est, de se et quatenus lex est, annexa est

[h] [conf. infra Prælect. vi. Sect. 17; et Grot. de Jur. Belli ac Pacis, Lib. ii. Cap. xxiii. Sect. 11. 1.]

[[i] supra Sect. 11.]

16. *Thirdly:* Suppose that some one drives out the legitimate prince by force and arms, or so far controls him that he cannot pursue his right; and while he still survives, seizes the reins of authority, and acts as King, though he is really an usurper; this being not a case where the right is doubtful, but where the wrong is evident: what is a good citizen to do, who has sworn fidelity to the legitimate prince, or is as much bound as if he had so sworn?

Sanderson says, that it is not only lawful (morally) for a good citizen to obey the laws made by a ruler *de facto*, who is not a ruler *de jure:* (provided what is commanded be not disgraceful or unjust:) but that it may happen, and does often happen, that the condition of things is such, that if he do not obey he neglects a duty.

Objection: It was stated before (Art. 7, &c.) that laws made by one who has not legitimate power are not really Laws, and do not oblige.

Answer: This is true: the obligation does not arise from the Law.

[k] *Obligatio;* eamque sequitur necessario, ut *effectus* suam *causam.* At legem a jus non habente latam diximus non esse vere sed *æquivoce legem;* proinde nec *obligandi vim* habere. Quæcunque ergo subdito hac in re incumbit *obligatio,* aliunde exurgit, et non ab ipsa *Lege:* cui *extrinsecus* advenit ut obliget, et mere *per accidens;* ut si musicus ædificet.

XVII. Quæres: Si non ex *Lege,* unde tandem oritur ista *subditi obligatio?* Respondeo, cum sit pii et prudentis viri, non solum quid *liceat* attendere, sed et quid *ipsum deceat* videre, et quid *aliis expediat:* posse bonum civem obligari ad id faciendum in sui et concivium suorum commodum, ad quod faciendum alias et de jure non tenetur. Oritur ergo ista *obligatio* ex duplici illa parte officii, qua *sibi* quisque debitor est, et qua *Patriæ.* Se quod attinet imprimis, viri et *prudentis* est, sibi rebusque suis in futurum prospicere; et *honesti,* qua sit præsenti conditione cogitare. Dandam esse unicuique operam (omnibus viis et modis *licitis* et *honestis*) se vitamque suam tueri, atque ita se gerere ut possit tuto et *in pace vivere,* agros, ædes, possessiones suas sibi habere, eorumque qui ipsi et vitam et facultates cum libuerit eripere possunt, offensionem devitare, nemo est (nimirum *natura* id dictante,) qui non fateatur. Et hinc *prima* parendi *necessitas,* quam propterea non tam urget noster Apostolus quam supponit, velut cujus unicuique a natura insitus est sensus, [l] *οὐ μόνον διὰ τὴν ὀργήν:* Quasi hominis esset parum sanæ mentis, ejus qui *gladii potestatem* habet *iram* temere provocare, et ejus offensam contumacia sua, nulla postulante necessitate, incurrere. Ipsius igitur interest, in *salutis suæ* compendium, iniqua nonnulla pati, legibus obtemperare, et (quoad sine peccato fieri potest) *ταῖς οὔσαις ἐξουσίαις ὑποτάσσεσθαι:* sicque *jugum,* quod excutere non potest, *bene ferendo* levius aliquanto, mitius et tolerabilius efficere.

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[k] [conf. supra Sect. 10; et infra Præl. VI. Sectt. 20, 21.]

[l] Rom. xiii. 5.

17. *Objection removed:* From what then does the obligation arise?

Answer: From a man's duty to *himself* and to his *country.*

To himself: the duty of self-preservation. For this end, a man may make up his mind to suffer some injustice;—to bear quietly the yoke which he cannot shake off. He must be subject "for wrath," as the Apostle says, to him that bears the sword.

XVIII. Sed et altera insuper, eaque fortiore, quæque ad *Conscientiam* propius pertingit, *Obligatione*, ad hoc idem faciendum semet obstrictum sentiet, quisquis quæ ex *politico regimine* civibus proveniunt bona attente cum animo suo cogitaverit. Et ita sane [m] *Chrysostomus* illa Apostoli verba διὰ τὴν συνείδησιν hoc loco interpretatur, ut ad illius *protectionis beneficium* quam præstat subditis *civilis dominatio*, potissimum respexisse putet Apostolum, Quasi diceret, *Conscius* cum sit quilibet civis, quam multis beneficiis fruatur sub *principatu politico*, sciat se, in tot et tantorum *beneficiorum compensationem*, ad deferendam vicissim ei qui principatum tenet debitam *obedientiam*, quadam quasi *gratitudinis lege* teneri: ἵνα μὴ ἀγνώμων δόξῃ περὶ τὸν εὐεργέτην, ut ubi loquitur *Chrysostomus*, a mente *Apostoli* alieno, (ut mox videbimus,) ast sensu alias haud multum incommodo. Fateor equidem, (quod est a [n] *Tacito* observatum) *raro fieri, ut quis imperium flagitio quæsitum bonis artibus exerceat:* pleraque enim quibus artibus parantur iisdem et conservanda esse videntur, et *scelere tuendum est scelus.* Posse tamen id fieri, *Hieronis Siculi*, *Edgari Anglorum Regis*, et aliorum nonnullorum exempla, qui principatum non optime acquisitum modeste tamen administrarunt, satis testantur. Sed utcunque rem gerat qui *principatum* tenet, non poterit unquam sic *abuti* sua potestate, ut non interim sit Θεοῦ διάκονος εἰς τὸ ἀγαθόν, ut loquitur Apostolus istius capitis *commate quarto.* Nec enim ulla tam mera tyrannis esse potest, *quæ non speciem aliquam justæ dominationis retineat*, et non aliqua saltem ex parte *subsidio sit ad tuendam hominum societatem*, ut etiam recte ad hunc locum admonuit [o] *Calvinus.* Cum itaque, quod rerum nostrarum *domini* sumus, quod *tuti* a cædibus et rapina vivimus, imo et id ipsum quod *vivimus*, *summis potestatibus* debeamus; (absque quibus esset, nullum nobis adversus sceleratorum hominum libidines, furores, injurias, aut *præsidium* esset aut *remedium;*) æquissima res est, ut pro tot tantisque beneficiis aliquid saltem

[m] [in Ep. ad Rom. Hom. xxiii. Opp. Tom. IX. p. 688. D. E. ed. Bened.]

[n] [Hist. Lib. I. cap. xxx.]

[o] [Commentarr. Vol. V. p. 199, ed. Tholuck.; ceterum vide infra Sect. 25.]

18. Also, *to his country.* For the advantages of every kind of political government are great to every one. However the ruler may abuse his power, he is "the minister of God for good" (ver. 4) to the subjects in general. And we owe obedience as a return for protection.

ipsis vicissim rependamus. Exigit hoc a nobis (optima *æqui boni lex*) vetus illa commutationum formula, *Δός τι, καὶ λάβε τι.* Et profecto perversissimæ mentis est, sub illius *dominationis patrocinio* velle vivere, cui *parere* nolis: et cujus *protectione* gaudeas, ejus *imperium* detrectare.

XIX. Porro cum nemo *sibi solum* natus sit, sed humano generi et publicæ utilitati: hinc oritur *tertia parendi necessitas* præsenti potestati, quocunque jure ipsam adepti sunt qui rerum potiuntur. Unde etiam aliquo modo constare poterit, quis modus sit statuendus, et qui fines, illi *obedientiæ,* quæ imperium injuste possidenti, *ex conscientiæ debito,* a cive præstanda est. Quicquid enim *finis alicujus gratia* faciendum est, eatenus fieri oportet, in quantum *ei fini consequendo* necessarium vel utile videbitur. Civilis autem regiminis, ejusque quæ ipsi debita est obedientiæ, finis est, *humanæ societatis salus et tranquillitas.* In quantum igitur illius *societatis,* cujus ipse membrum et pars est, *salus et tranquillitas* exigit, eatenus civis unusquisque imperiis ejus, qui *de facto* in illa societate summæ rerum præest, obtemperare tenetur. Sunt autem *conservandis* humanis *societatibus* tria hæc imprimis necessaria: i. *Defensio patriæ,* adversus externam vim et hostium conatus. ii. *Administratio juris,* ut sua bonis civibus præmia, improbis supplicia, prout legibus constituta sunt, reddantur; quod *Justitiæ distributivæ* munus est. iii. Quod ad *Justitiam commutativam* spectat, *Commercii cura* et mercaturæ; de rebus emendis, vendundis, permutandis, et omne genus contractibus. His *tribus* rebus ita continetur incolumitas humani generis, ut nisi ista adsint, fieri non potest, quin protinus pessum eant universa; omnia rapinis, cædibus, fraudibus, injuriis repleantur; innocentissimorum civium vita, conjuges, fortunæ, *potentiorum* libidini prædæ sint et ludibrio. Quibus malis ut obviam eatur, malorumque petulantia mature coerceatur; unicum remedium erit, si boni cives suum esse

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19. And such advantages pertain to the public, as well as to individuals. Hence the public safety and tranquillity require obedience; and we must pay it as far as these public purposes require. The conservation of human society requires mainly three things: the Defence of the Nation; the Administration of Justice: the Protection of Trade. If these points be not secured, there must be utter confusion and ruin. And good citizens must obey those by whom they are preserved from such evils.

meminerint, eorum *legibus* et *imperiis*, quorum *gladio* et *auctoritate* a sceleratorum injuriis defenduntur, in omnibus quæ ad *publicam salutem* faciunt, obtemperare.

XX. Sed *hactenus obtemperare*, (ne quis ista quæ dicta sunt secus quam par est interpretetur) ut simul meminerint, ad hanc obedientiam præstandam se non ultra teneri, quam aut *gratitudinis ratio* aut *publicæ rei salus* postulat: et observandas esse *Leges* potestatem injuste possidentis, non quasi ullo imperantis jure *obligatorias*, sed (ut recte [p]*Aquinas*) ad vitandum *scandalum* vel *turbationem Reipublicæ*. In quo casu (inquit ille) debet quis *jure suo cedere:* quod et probat ex illis Christi verbis, *Matth.* v. 40, 41, *Ei qui vult tecum litigare, et tunicam tuam capere, dimitte et pallium: Et qui te angariabit ad miliare unum, abi cum eo duo.* Potest ergo quis, et (prout res exigit) debet, etiam *privatæ pacis*, sed multo ergo magis *publicæ tranquillitatis* causa, *jure suo cedere;* et ei, qui imperandi jus non habet, parere. Sed et hic iterum cauto opus est, idque vel maxime: ut scilicet ita *jure suo* cedat, ne quid eo pacto *juri decedat alieno.* Id juste et prudenter cavit *Abraham, Gen.* xiv., dum Regi Sodomorum sic gratiam fecit partis suæ *acrothiniorum,* quæ sibi ex devictis quinque regibus *jure belli* in prædam cesserant, ut et *sacerdoti* sua decima, et tribus *belli sociis* ad suas portiones jus integrum remaneret. Proinde *regni invasori* sic præstandum est obsequium, ut fidelitas *legitimo hæredi* debita nullatenus violetur, nec aliquid fiat in juris sui præjudicium.

XXI. At qui hoc fieri potest? inquies. Quod regni invasori gratum est, non potest *legitimo principi* non esse

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[p] Sum. Theol. 1[ma] 2[dæ], Quæst. xcvi. Art. 4. conclus.

20. But also it is to be recollected that they are not bound to obey further than these grounds hold,—namely, a return for protection, and a care for the public quiet and comfort. In such cases we may give up our rights, according to the precepts, Matth. v. 40, 41.

But we must take care, in giving up our rights, not to give up those of other persons. So Abraham, Gen. xiv. 21, in restoring to the King of Sodom his property, reserved the tithes which he gave to Melchisedek, and the portions which were due to his three allies. In like manner, obedience is to be rendered to an usurper in such a manner that we do not violate our fidelity to the legitimate heir, nor prejudice his rights.

21. *Objection.* But how can this be done? it may be asked.

ingratissimum. [q] *Nemo potest duobus dominis servire,* tam adversa spectantibus; quorum omnia vota, studia, consilia, pronis in mutuam perniciem affectibus, in contrarias partes feruntur. Respondeo, rite subductis rationibus, non esse cur putemus, *legitimo principi,* sed extorri, ingratum omnino fore, *injusto imperii possessori* præstitum a cive, eo quo dictum est modo, et intra dictos fines, obsequium: quin potius *ipso consentiente* sic fieri oportuisse præsumendum est. Siquidem ejusmodi obsequio, non tam injuste dominanti, quam toti *communitati,* hoc est, *Reipublicæ,* serviisse existimandus est: quam salvam esse, *justi hæredis* nihilo minus interest, quam illius qui *de facto* in ea dominatur. Fortassean et multo etiam magis, quo sincerius patriam diligere censendus est, et ei bona omnia velle, qui genuinus *patriæ pater* est, quam qui eo excluso in ipsius ædes se ingessit, et in *familiam* ipsius jus et imperium exercet; et quo puriores et vehementiores in liberos *matris* affectus sunt, quam *novercæ.* Ut in celebri illa [r] duarum muliercularum coram *Rege Salomone* altercatione, quæ vere *mater* erat, puerulum quem suum esse sciret, salvum utcunque cupiit, maluitque *alterius* esse, imo *adversariæ,* quam perire: Sic *civium* salutem, quos etsi sub

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[q] Matt. vi. 24. [r] 1 Reg. iii. 26.

What the Usurper likes, the rightful Sovereign must dislike. No man can serve two masters.

Answer. Not so. All things considered, the rightful but exiled Sovereign will not be displeased with obedience paid to the Usurper, within the above limits. On the contrary, his consent may be presumed. Such obedience is given, not so much to the Usurper, as to the Community, to the State; in the weal of which the just heir is interested no less than the Usurper. Indeed we must suppose the rightful heir to have more affection for the country than the Usurper; the one has a mother's feelings, the other, a step-mother's; and as in the judgment of Solomon, the real mother would rather that the child should be preserved under the care of another than be destroyed, the rightful heir will desire that the citizens should rather provide for their safety by accommodating themselves to circumstances, than be ruined by opposition.

And thus, says Sanderson, you have my opinion on this grave and difficult question; which, however, I do not give as immutable, but am prepared to be convinced if any one can teach me better.

[We must recollect, in reading this discussion, that at the time when this lecture was delivered, (1647,) the questions here examined were practical questions. King Charles I. had been a prisoner for

alieno jugo, *suos* tamen interim agnoscit, et sibi olim utiles fore confidit, *legitimo hæredi* majori esse curæ et verisimile est et merito præsumitur, quam ei, qui quum imperium injuste usurpaverit, de *stabilienda* recens quæsita *dominatione sua* quam de *salute civium procuranda*, par est esse magis sollicitum; adeoque malle ipsum, ut *præsentibus rebus*, quo salvi sint, se qua licet modeste *accommodent*, quam ut *potentiori* in certam suam perniciem semet intempestive *opponant*. Atque ita habetis meam de gravissima hac et ardua admodum quæstione sententiam; nihil interim temere statuentis, sed eam, ubi quis certiora docuerit, mutare parati, et in ipsius castra transire.

XXII. Hactenus hæc: sequitur CONCLUSIO QUARTA. *Leges humanæ de rebus non illicitis conscientias obligant*

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two years, and was now confined at Carisbrook castle. His son, afterwards Charles II., was an exile at the court of France. Cromwell, though not yet Protector, might be considered as the most powerful person in the kingdom. The government of the country was nominally in the hands of the Parliament. Sanderson's decision, as to the duty of a subject, may be regarded as moderate and reasonable, and points out the course followed by himself and many of his royalist friends. It agrees with the decision given in his *Cases of Conscience*, respecting the *Engagement* which the Parliament imposed, and which ran thus: "I do promise to be true and faithful to the Commonwealth of England, as it is now established without King or Lords." In an opinion communicated to a friend, but not published till after his death, he pronounces that a loyal person may take this engagement "in its lowest construction," which is, that he will live quietly under the protection of the Parliament, as being for the present possessed of the supreme power. Nor was this an opinion taken up for the emergency. He had already, as early as 1641, in his fifth Sermon *ad Populum*, taught that the sovereign *de facto* may be obeyed with a good conscience.

But at the same time that he laid down this rule, or permission, for men of peace, we cannot doubt that he thought those persons also justified in conscience who took up arms on the royalist side. Indeed in this direction he goes so far, that in his decision of the *Case of Conscience* touching a *Military Life*, (whether such a life, as a Profession, be morally lawful,) he does not allow that anything can justify such a life except the command, or at least, the permission, of "the Prince:" by which phrase, following earlier writers, he constantly describes the Supreme Power in the State.]

22. FOURTH CONCLUSION. With regard to matters not (morally) unlawful, human laws oblige the conscience directly and in general:

per se et directe in generali. Quod est dicere, Hoc *præceptum generale,* ut subditi obtemperent *legibus humanis* rite constitutis, *est per se et directe obligatorium.* Id quod ipse etiam [s]*Calvinus,* qui non solet humanis constitutionibus nimium tribuere, agnoscit: qui ita distinguendum esse monet inter *genus et speciem,* ut licet negandum sit *leges in speciali* obligare conscientias, concedendum tamen sit eas obligare *in generali.* Ratio perspicua: quia hoc *præceptum generale* ad ipsam æternam legem divinam pertinet; cujus omnis pars est *per se et directe,* et non ex consequenti solum, *obligatoria* conscientiarum. Pertinet autem ad *divinam legem* duplici
1 nomine. Tum, quia *rationalis ratio* dictat, non posse pacem et ordinem, quæ anima est Rerumpublicarum et omnis humanæ societatis, conservari, nisi *legibus* rite constitutis
2 obediatur: Tum, quia in *sacra Scriptura* Deus præcepit, ut his, qui nobis in eo ordine quem Deus præstituit præsunt, subjiciamur; ut ὑπερεχούσαις ἐξουσίαις pareamus, nec iis resistamus, [t]hujus capitis *vers.* 1 et 2 nec eorum jugo colla nostra subducamus, eo scilicet prætextu, quod *meri homines* sint, et *creaturæ,* sicut et nos, [u]κτίσις ἀνθρωπίνη, filii Adæ, mortale; genus iisdem omnino affectibus, perpessionibus, infirmitatibus, casibus, quibus et nos obnoxii. Quin potius memores, *Deum Opt. Max.* eos nobis cum delegata potestate velut *suos* in terris *vicarios* præfecisse, ipsosque propterea tanto honore dignatum esse, ut eis et *nomen suum* quasi visibilibus et mortalibus quibusdam *Diis* communicaverit, [x]*Ego*

[s] Instit. Lib. IV. cap. X. Sect. 5.
[t] [sc. Rom. xiii.]
[u] 1 Pet. ii. 13.
[x] Psal. lxxxii. 6. [conf. Prælect. VII. Sect. 15.]

or in other words, the *General Rule,* that subjects shall obey human laws, rightly ordained, is of itself and directly obligatory.

Even Calvin, who, for the most part, allows little weight to human laws, acknowledges this. In his *Institutes,* he teaches that though special laws do not bind the conscience, yet that laws in general do so. The reason is evident, that the above *general rule* is part of the divine law: and that, in two ways: *first,* because natural reason shews us that we cannot have peace and order in human society except laws be obeyed; and *secondly,* because Scripture teaches us to obey the powers that be, *for conscience' sake,* as St Paul says (Rom. xv. 1, 2), and *for the Lord's sake,* as St Peter, 1 Pet. ii. 13.

We are not to refuse obedience on the pretext that the rulers are mere men like ourselves, but to recollect that they rule by the ordinance of God.

dixi Dii estis: par est ut eos summa cum reverentia colamus, honoremus, obsequamur. Etsi non *ipsorum gratia;* qui, ut *homines* sunt, pari nobiscum conditione sunt, nec *de meliore luto* effícti: at *divinæ* tamen *ordinationis* intuitu, qui eos qua *principes* sunt, sublimiore loco esse voluit quam reliquos homines, et suæ potestatis aliquatenus participavit. *Διὰ τὸν κύριον,* ut alibi [y] *Petrus;* et ex consequenti *διὰ τὴν συνείδησιν,* ut hic loquitur Apostolus *Paulus.*

XXIII. Conclusio Quinta. *Leges humanæ rite constitutæ, etiam in particulari,* etsi non directe et per se, *ex consequenti tamen et virtute generalis præcepti divini, obligant subditorum conscientias.* Dico *primo, Leges rite con-* 1
stitutas: id est, et ratione *Causæ efficientis;* ab eo, qui legitima potestate præditus est, latas: et *ratione Materiæ;* nil illicitum, inhonestum, turpe, aut officio hominis Christiani quomodolibet contrarium, imperantes. Jam enim diximus eas
leges, quæ utrovis nomine peccant, non obligare. Dico *secundo,* 2
In particulari: id est, quantum ad determinationem *particularem* in rebus mediis aliisque. Ut *quale* et *quantum tributum* sit solvendum; *Quas merces* liceat aut non liceat e regione exportare; In Academia *qui habitus* quibus gradibus competant; *Quæ statuta* sint dispensabilia, quæ non etc.
Dico *tertio, Leges ejusmodi non obligare per se et directe.* 3a
Probatur *primo,* quia Deus unus est *Legislator,* qui in con- 1
scientias hominum merum et directum imperium habet. *Unus*

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[y] [1 Epist. ii. 13.]

23. Fifth Conclusion. Human Laws, rightly constituted, do, even in matters particular, oblige the consciences of subjects, though not directly and of themselves, yet by consequence, and by virtue of the divine precept.

First, Laws *rightly constituted,* that is, ordained by legitimate authority, and not enjoining anything immoral.

Secondly, in matters particular, that is, as to the particular determination of things indifferent; as, what taxes are to be paid; what merchandize may be exported; what dress is to be worn in the University; what statutes are dispensable; and

Thirdly, Such laws do *not* oblige the conscience *directly and of themselves:* for, 1°, God alone can do this, Jam. iv. 22; and, the things being, by supposition, indifferent, are things about which He has not determined, but left the determination to man.

2°, Those precepts only oblige directly and of themselves, which do so by reason of the matter. But things indifferent, since, before

est Legislator, qui servare potest et perdere, Jac. iv. 12. Deum autem supponimus de rebus ejusmodi *mediis* et *adiaphoris,* [z] quæ fere sunt *materia Legum humanarum,* nullam Legem tulisse in *particulari;* sed ea omnia eorum arbitrio,
2 qui ipsius in terris vices gerunt, permisisse. Probatur *secundo,* quia illa tantum obligant *directe et per se,* quæ obligant ratione *Materiæ* velut internæ causæ, citra respectum ad causas externas, *Efficientem* scilicet et *Finem:* i. e. quæ obligarent, etsi ab hominibus mandata non essent. At res *mediæ* et *adiaphoræ* lege humana positiva et particulari determinatæ, quum sint ita natura sua comparatæ, ut ante illam determinationem libere possent a quoquam fieri vel non fieri, non obli-
3 b gant ratione *materiæ;* ergo nec *per se.* Dico *tertio, ejusmodi leges obligare tamen* in particulari *ex consequenti,* et virtute *præcepti divini* generalis. Et quia in hoc ultimo dicto totius controversiæ quasi cardo vertitur, propono *Conclusionem,* jam statim pluribus confirmandam, aliquanto explicatius, sic; *Leges humanæ positivæ* rite et legitime constitutæ, quæ continent *particulares determinationes* circa res medias, in se adiaphoras, et antequam sic determinarentur *liberas ad utrumlibet,* virtute illius *præcepti divini,* quo tenemur iis

[z] [conf. infra Prælect. VI. Sectt. 15, 22.]

the determination, they may allowably be done or not done, do not oblige by reason of their matter, that is, not of themselves.

Fourthly: Such laws *do* however, in the particular matter, oblige the conscience *by consequence* and *by virtue of the divine precept.* And as this is the main point, it shall be stated as a distinct CONCLUSION, thus:

Positive human laws, regularly and legitimately enacted, containing particular determinations concerning things indifferent, (and which, being indifferent, might, before the determination, be allowably either done or omitted,) do, in virtue of that divine precept, by which we are enjoined to obey those who are set over us by God, so oblige the Consciences of subjects, that they are bound to obey, under the penalty of violated Conscience and mortal sin.

[It is evident that this paragraph, though it is marked by the word *tertio,* is not really a third argument on the point, that Human Laws *do not* oblige the Conscience of themselves; but is the enunciation of a proposition hereafter to be confirmed, that such Laws *do* oblige the Conscience by virtue of the divine precept. It is, in short, the Fifth Conclusion, after the negative parts of it have been rejected. I have not ventured, however, to alter the text.]

The Arguments for the Fifth Conclusion, thus explained, follow.

parere qui nobis a Deo præpositi sunt, ita *obligant* subditorum conscientias ad præstandam eis obedientiam, ut sub peccato mortali et metu offensionis Dei teneantur ejusmodi *legibus obtemperare;* et ni sic fecerint, accusantis conscientiæ murmura et ictus perferre.

XXIV. Firmatur hæc *Conclusio* multis rationibus: quarum *prima* ex præsenti textu desumitur, *Quare subjici necesse est, non solum propter iram, sed et propter conscientiam.* Verba sunt satis perspicua. Urserat nempe Apostolus superioribus versibus aliquanto fusius *Christianæ subjectionis* necessitatem, *duobus* potissimum *argumentis: altero,* ab instituto et *ordinatione Dei,* duobus versibus primis; totidem sequentibus, ab humani *supplicii metu, altero.* Utrumque argumentum ὡς ἐν ἀνακεφαλαιώσεως τρόπῳ breviter recolligit et repetit *quinto hoc versu:* idque (qui fere mos est sacræ Scripturæ,) *ordine inverso,* repetitionem exorsus a membro posteriore, et proximiore. Quasi dicat, Utrinque vobis incumbit gravis *parendi necessitas;* sive vos *pœnæ metus* tangat, sive pulset *officii conscientia.* Si quod malum est feceritis, spreta nimirum potestatum et legum auctoritate: cogitate eum qui vobis præest Magistratum *Dei ministrum* esse, [a] ἔκδικον εἰς ὀργὴν, neglecti officii vindicem; *gladium* sibi a Deo concreditum stringere paratum, ad infligendum legum suarum contemptoribus debitam pœnam corporalem. Sin vos ista parum moveant, quod speretis fieri posse, ut ipsius brachium aliqua evadatis:

Ast sperate Deum memorem fandi atque nefandi,

hunc timete justum judicem; veremini *Conscientias* vestras, severos *accusatores, testes* veraces, importunos *tortores.* Hos

[a] [conf. infra Sect. 30: Præl. VI. Sect. 11, et Præl. VII. Sect. 15.]

24. *First Argument.* Rom. xiii. 5, "Wherefore ye must needs be subject not only for wrath, but also for conscience' sake." And this appears further by considering this verse as a resumption of the argument in vv. 1, 2. We may put the Argument thus: That which, if transgressed, wounds the Conscience, does really oblige the Conscience; for every wounding of the Conscience arises from some sense of obligation. But human laws transgressed wound the Conscience, as appears by the words of St Paul, which amount to this: Ye cannot have a Conscience whole and sound, except ye be subject: Therefore Human Laws oblige the Conscience.

nullis potestis aut latebris effugere, aut artibus eludere. Ex hujus ergo loci scopo sic struitur argumentum. Quæ violata conscientiam *lædunt*, ea conscientiam *obligant*, quia omnem conscientiæ *læsionem* sive gravamen ex alicujus *obligationis* sensu oriri necesse est, sicut omnes alii *effectus* consequuntur suas *causas*. At violatæ leges humanæ *lædunt* conscientiam. Id enim sibi volunt ista verba, *Necesse est subjici propter conscientiam:* i. e. Non potestis conscientiam integram et illæsam conservare nisi subjiciamini. Ergo *Leges humanæ obligant conscientiam.*

XXV. Ad hujus argumenti vim enervandam, sunt qui
Conscientiam hoc in loco aliter interpretantur, et *Chrysostomi*
auctoritate se præcipue tuentur: acsi non alia hic *conscientia*
intelligenda veniret, quam illa *beneficiorum*, quæ subditis
obveniunt a *regimine politico;* sensu a nobis prius allato; pio
quidem illo (fateor, et nos ante laudavimus,) sed, ut arbitror,
1 parum genuino. Contra enim, *Primo*, singularis pene est
inter veteres in ea interpretatione *Chrysostomus*, quem secuti
e tot interpretibus vix unus et alter extra [b] *Œcumenium* et
[c] *Theophylactum*, qui in recensendis testimoniis nullo numero
habendi sunt; quia *Chrysostomi* vestigiis ita semper insistunt,
2 ut universi tres unum tantum faciant testem. *Secundo*, nec
potest afferri locus aliquis, in quo *D. Paulus*, aut alius quis
sacrorum scriptorum, *Conscientiæ* vocabulo in eo sensu usus
3 sit, quem hic sibi fingit *Chrysostomus*. *Tertio*, adducere
voluit *Apostolus*, ut res ipsa clamat, aliquid quod esset gra-
vius, et ad excitandum hominum animos efficacius, *supplicio
temporali:* cui rei aptius certe fuerat eos injecto *offensionis
divinæ* metu perterrefacere, quam *accepti* ab hominibus *bene-*

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[b] [Commentar. in l., cap. xxviii. Opp. Tom. I. p. 376. A. ed. Paris. 1631.]

[c] [Commentar. in l., Opp. Tom. II. p. 95. E. ed. Venet. 1755.]

25. *Objection.* To weaken this Argument, some, following Chrysostom, say that, by Conscience, here is meant a Consciousness of benefits received from the civil government, as protection. But this cannot be the import of the passage: for we answer, 1°; Chrysostom is the only ancient (independent) father who gives this interpretation.

2°; St Paul nowhere uses *Conscience* in this sense.

3°; St Paul's reasoning required that he should in these words urge something stronger than temporal punishment; this could not be mere gratitude to man, but must be the fear of offending God.

4°; And this appears also from considering that this verse is a repetition of the argument in vv. 1, 2, where the Apostle is speaking, not of the Consciousness of a benefit, but of the Conscience of a duty.

ficii admonuisse. *Quarto* denique, concludere hic voluit Apo- 4
stolus, brevi repetitione earum rationum quas jam ante adduxerat, suam de *Christianæ subjectione* dissertationem: adduxerat autem duobus primis versibus hujus capitis rationem, non a *beneficiis,* sed ab *officii conscientia* desumptam.

XXVI. Sequitur *Ratio secunda;* ab usu et fine *Legum.* Quas condi, conditasque observari, ad societates humanas in pace et publica tranquillitate conservandas, pernecessarium est: alias nulla esset certa contractuum *regula,* nulla fidei et justitiæ civilis *mensura,* quæ sunt civitatum et societatum firmissima vincula. *Lex* enim *Dei,* et *naturalis* et *scripta,* licet sit in suo genere utraque vel seorsim [d]*perfectissima,* complectaturque conjuncta tum quæ sunt *fidei supernaturalis* singula, tum etiam *rerum agendarum* principia generalia ad omnes vitæ partes regendas accommoda: Neutra tamen ad omnia ea *particularia* descendit, quæ ad conservandam in civitatibus et politiis *pacem* et *ordinem* possunt esse, et plerumque sunt, necessaria. Exempli gratia. *Lex rationis,* quæ naturæ lex est, dictat, et *Scriptura* etiam hujus capitis *versu proximo* docet, ad alendos principes, ad bellorum sumptus, ad alios usus publicos, *Tributa esse pendenda.* Sed nisi lege lata definiatur *quantum* sit solvendum, et *quota proportione,* et *a quibus,* et *quo temporis spatio,* et id genus alia: aut nihil omnino pendetur, aut non tempestive satis, aut quod non satis sit ad usus Reipublicæ. Si dicas, hoc argumento probari quidem *Legum necessitatem,* at non item statui *obligationem:* posse enim pœnis propositis adigi subditos ad officium: Fatendum id quidem esset, si hic staretur sed si illud insuper cogitetur, dum præceps fertur [e]*ad vetitum nefas,* quam sit

Audax omnia perpeti
Gens humana,

quamque officii *infidelis custos sit metus,* ni adsit etiam *Reli-*

[d] [conf. supra Præl. II. Sect. 12; infra Præl. IX. Sect. 6.]

[e] Horat. Carm. Lib. I. [iii. v. 25.]

26. *Second Argument.* From the use and end of Laws, which are to be made and observed in order to keep societies of men in peace and order; and without which there could be no rules of contracts or measures of faith and justice, and so, no society. The Law of God, though perfect for its own purposes, does not descend to particulars. For instance, both the law of Reason and Scripture in this very place (v. 6) direct us to pay tribute to the Sovereign: but in order that this

gionis sensus aliquis qui homines in officio contineat: facile constabit quam provide a sapientissimo rerum moderatore *Deo Opt. Max.* consultum sit rebus humanis, quod indiderit *conscientiis* hominum, quæ cum ipso rationis usu simul adolesceret, religiosam quandam *Legum reverentiam.* Unde factum ut apud *Ethnicos* veri Dei ignaros, vix repertus fuerit e priscis *Legumlatoribus,* qui quas condebat *leges,* non eas ab aliquo *Numine* sibi traditas mentiretur. De *Numa, Zaleuco, Lycurgo,* ceteris, quæ in hanc rem tradunt historiæ, non opus est ut recenseam, quum sint omnibus notissima.

XXVII. *Ratio tertia.* Quod faciendum est *propter Dominum,* ad id faciendum obligamur *in Conscientia.* Sed *legibus humanis* rite constitutis, *i. e.* a suprema potestate, vel his qui ab ea ad id delegati sunt, latis, subesse tenemur *propter Dominum,* 1 *Pet.* ii. 13, *Subditi estote omni humanæ creaturæ propter Dominum sive Regi, ὡς ὑπερέχοντι,* (quod satis explicat quid sit *Paulo* ἐξουσίαις ὑπερεχούσαις istius capitis versu primo), *sive præfectis ab eo missis, etc.:* ubi illud διὰ τὸν κύριον *propter Dominum,* Conscientiæ obliga-
1 tionem significare, constat *primo* ex usu similium alibi locutionum, ut *Eph.* vi. 1, de officio liberorum erga parentes, *Liberi, obedite parentibus vestris ἐν κυρίῳ, in Domino;* Et de servorum officio erga dominos *ibid. vers.* 7, cum benevolentia δουλεύοντες τῷ κυρίῳ, *Domino servientes et non hominibus,* quod *Col.* iii. 23, est *ὡς κυρίῳ, ut Domino et non hominibus:* quasi dicat, *propter conscientiam, et non solum propter iram,* vel ex timore Dei magis quam ob metum homi-
2 nis. Constat id ipsum *secundo* ex verbis sequentibus in illo Petri loco *vers.* 15, *ὅτι οὕτως ἐστὶ τὸ θέλημα Θεοῦ, quia sic est voluntas Dei:* uti Paulus etiam jam laudato *ad Ephesios* capite *vers.* 6, de servorum officio locutus, hortatur ut

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may be done, there must be a Law to determine who is to pay, and how much, and at what intervals.

Objection. This proves the necessity of Laws, but not their obligation.

Answer. The necessity of Laws is not sufficient to restrain men, without a religious sanction; as appears by the proceedings of heathen Lawgivers.

27. *Third Argument.* 1 Pet. ii. 13, "Submit yourselves to every ordinance of man for the Lord's sake." What is to be done "for the Lord's sake" is obligatory on the Conscience: compare the passages given in the text.

dominis suis obsequantur in simplicitate cordis ποιοῦντες τὸ θέλημα τοῦ Θεοῦ, *facientes voluntatem Dei a corde.* Est autem [f] *Voluntas Dei* ipsissima illa, quam adæquatam diximus, *Conscientiæ regula.*

XXVIII. *Ratio quarta.* Quod *naturalis ratio* ita dictat esse faciendum, ut si non fiat, *culpa* et *reatus* contrahatur, ad id faciendum procul dubio obligamur in conscientia. Quum enim ad *conscientiam* pertineat *sensus peccati*, et exinde natus *supplicii metus;* quicquid recte mens judicat *culpam* inducere, et *pœnæ reatum*, id omne et *conscientiam obligare* censendum est. Naturalis autem ratio (cujus judicium non potest esse non rectum) *legibus humanis* parendum esse sic dictat; ut si non fiat, quod imperatum est, ipsi mox *conscii* nobis simus, mera id *nostra culpa* contingere quod non fiat.

XXIX. *Ratio quinta.* Cujus violatio *Legis Dei* violationem necessario secum trahit, id *obligat Conscientiam:* quandoquidem nemo potest illæsa conscientia violare *Legem Dei*, quæ est *regula Conscientiæ.* Violatio autem legis cujuscunque particularis ab hominibus rite constitutæ, necessario secum trahit violationem *Legis Dei:* illius nempe *præcepti generalis*, quo Deus præcipit *obedientiam* prælatis. Ergo, *etc.*

XXX. *Ratio sexta.* Obligamur in conscientia ad non faciendum id, quod si fiat perinde est ac si Deo resisteretur.

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[f] [Vid. supra Prælect. IV. Sect. 20.]

28. *Fourth Argument.* What natural Reason so requires to be done by us, that if it be not done, there is fault and guilt, is obligatory on the Conscience: for in the Conscience, resides the sense of fault and guilt. But natural Reason does in this way require us to obey Human Laws; so that if we do not do so, we are conscious of fault and guilt. Therefore Human Laws are obligatory on the Conscience.

29. *Fifth Argument.* That whereof the transgression necessarily draws along with it a violation of the Law of God, obliges the Conscience; for no one can with a whole Conscience violate the Law of God, which is the Rule of Conscience. But the transgression of any law rightly constituted by man, does necessarily draw along with it a violation of the Law of God; namely, of that General Rule in which God enjoins obedience to the powers that be. Therefore laws rightly constituted by men do oblige the Conscience.

30. *Sixth Reason.* We are obliged in Conscience to do that,

Obligamur enim *subjici Deo,* et proinde ei *non resistere,* quum sint *Subjectio* et *Resistentia* sibi invicem contraria, nec possit aliquis eidem personæ simul et ὑποτάσσεσθαι et ἀντιτάσσεσθαι. Ast *legibus humanis* rite constitutis non obtemperare, est (*interpretative*) *Deo resistere.* Qui enim *legibus* non obtemperat, *potestati* Magistratus *Legislativæ* obsistit: quod qui facit, quum sit illa *potestas a Deo ordinata, Dei ordinationi* se opponit, adeoque consequenter et *interpretative* ipsi *Deo;* quod est ipsius *Pauli* postulatum *vers.* 2 hujus capitis, ex quo legitime concludit *subjectionis necessitatem* διὰ τὴν συνείδησιν in hoc versu.

XXXI. Ex his quæ dicta sunt, non erit difficile quæ ex adverso adduci solent *argumenta* dissolvere. Quorum primum et præcipuum est illud quod a *Christiana libertate* petitur: cui confirmando, pleraque Scripturæ loca quæ ad astruendam illam *libertatem* spectant, magna cum pompa in medium afferuntur, et objectiones inde varie efformantur. Scriptum est, inquiunt, a *Paulo,* 1 *Cor.* vii., *Pretio empti estis, nolite fieri servi hominum; Gal.* v. 1, *State in libertate in quam vos asseruit Christus, nec rursus jugo servitutis implicamini; Col.* ii. 16, *Nequis vos judicet in cibo vel potu,* etc. his similia. Disputant etiam non esse verisimile, Christum ita nos demum liberasse a Dei ipsius *legibus positivis,* quæ fuerunt certe justissimæ, ut tamen nos *Legum humanarum* vinculo obstrictos relinqueret.

XXXII. Ad singula loca respondeo. Sed vos ante præmonitos velim, quum sint multa *Christianæ libertatis* capita, cavendum esse diligenter ne ea temere confundantur, neve illa *Scripturæ* loca quæ ad unum aliquod *libertatis genus*

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which, if we do not, we resist the ordinance of God. But St Paul says, v. 2, of this Chap. xv. to the Romans, "Whosoever resisteth the power resisteth the ordinance of God." Therefore we are obliged in Conscience not to resist, but to obey, the powers that be.

31. *Objection First:* from passages of Scripture concerning Christian liberty, 1 Cor. vii. 23; Gal. v. 1; Col. ii. 16.

32. We answer First, in general, that there are several kinds of Christian liberty, and we must take care that we do not apply to one kind what is said of another. As to the particular passages:

1°, 1 Cor. vii. 23, "Ye are bought with a price; be not ye the servants of men."

Ans. By the context, we see that this means, Let each Christian as to his social position be a bondman or a freeman, as God has

pertinent, ad *aliud genus* quo non spectant imperite trahantur. Quæ [g] μετάβασις εἰς ἄλλο γένος, non *Antinomis* solum et *Anabaptistis*, sed et aliis plerisque istius ævi *Reformatoribus* perpetuum et solenne vitium est: ut alias sæpissime, ita vel maxime, ubi de *ritibus Ecclesiasticis* instituitur disputatio. Quod admonuisse sufficiat: nunc propius ad rem. In illo *ad Corinthios* loco hortari voluit *Apostolus* fideles, ut quisque quo ipsum loco Deus constituerit quibusque donis ornaverit, contentus statione sua, *intra debitos fines* se modeste contineat, et *donis* ac *vocatione Dei se* metiatur, vitamque et actiones ad illa accommode instituat, sive *servus* sit, sive *liber:* nec ita se conscientiamque suam cujusquam hominis aut *judicio* aut *imperio* mancipet, ut ab ejus *opinione* aut *voluntate* totus pendeat; Sed memor se *Dei* et domini *Jesu Christi servum* esse, sic *hominibus placere* studeat, et ipsorum affectibus aut imperiis inservire, ut nihil indignum faceat eo homine, qui se *servum Dei et Christi* profiteatur. Quæ cum sit Apostoli in tota illa perioche certissima mens, rectissime hinc concludi poterit, non debere nos *dominorum, parentum, principum,* aliorumve quorumcunque mortalium *hominum placitis* morem gerere, siquid a nobis fieri postulent quod *impium illicitumve* sit: quia hoc esset pro *Dei servo* servum se hominum præstare. At qui justis, honestis et utilibus *hominum constitutionibus* ex conscientia obtemperat, tantum abest ut propterea *servus hominum* censendus sit, ut a duobus summis Apostolis diserte dicatur *Domino Deo servire, et non hominibus, Eph.* vi. 7; *Col.* iii. 23; et 1 *Pet.* ii. 16, id est, (particula negandi, ut fieri amat, *comparative* sumpta,) *Deo potius quam hominibus:* quia *Deo* propter se, *hominibus* propter Deum. *Hominibus servit* quidem, quatenus quod imperatum est facit: *Deo* autem *servit,* quatenus ex officii conscientia id facit.

XXXIII. Locus ille alter *ad Galatas,* ex totius *Epistolæ scopo* optime intelligitur. E Judæis aut Judaizantibus Christianis *Pseudo-Apostoli* quidam in *Ecclesiis Galatiæ,*

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[g] [conf. supra Prælect. III. Sect. 17.]

appointed: but in matters which concern his religious state, let him recollect that he is Christ's servant above all. So Eph. vi. 6, "Doing service as to the Lord, and not to men," that is, *rather than to men.* So Col. iii. 23, and 1 Pet. ii. 16. We serve God for his own sake; men, for God's sake; men, as that which is commanded; God, as that which Conscience directs.

Gentiles ad fidem conversos, contra quam Apostoli in *Concilio Hierosolymitano* constituerant, non *baptizari* modo sed et *circuncidi* debere contendebant; multosque (ut solent *impostores* obtentu pietatis, et improba diligentia apud credulum vulgus mirum quantum proficere) in eum errorem induxerant, ut nisi se *circuncidi* paterentur, existimarent æternam se salutem consequi non posse. Pessimam hanc et prosperam imposturam non ferens *B. Pauli* spiritus, crassum illum errorem, ne ultra serperet, majore quam solet indignatione tota fere Epistola insectatur. Atque inter alia argumenta admonet Galatas ejus *libertatis*, qua Christus Ecclesiam ab inutili jam post ipsius adventum *Mosaicarum ceremoniarum* onere et jugo liberaverat; hortaturque ut partam Christi morte *libertatem* constanter tueantur, nec *jugo servitutis* colla denuo subdant: quod omnino facerent, si emortuæ jam *legis rituum* observationem sibi ducerent esse necessariam. Quod quam incongrue ad *leges humanas* utiles et Reipublicæ necessarias accommodetur, a quibus nullibi Scripturæ docent nos Christum liberasse, cæcus sit oportet, qui non videat.

XXXIV. Tertius item locus ex *Epistola ad Colossenses* non ad *Leges humanas* de rebus mediis rite constitutas pertinet; sed ad *doctrinas Impostorum*, qui populo Dei aliqua *dogmatice proponebant ut necessaria* quæ Deus non præceperat; (qui fuit mos *Pharisæorum Traditionariorum*, quos eo nomine reprehendit Christus, [h]*Matth.* xv., *Quod docerent doctrinas mandata hominum;*) vel e contra aliqua *dogmatice prohibebant ut illicita*, quæ Deus nusquam vetuerat, dicentes non licere hoc vel illud *tangere, gustare, attrectare.* Monet Apostolus, caveant sibi a *dogmatizantibus* hisce doctoribus

[h] [v. 10.]

33. 2°, Gal. v. 1, "Stand fast therefore in the liberty wherewith Christ hath made us free."

Ans. This refers to freedom from the Mosaic Ceremonial Law, as appears by the whole Epistle, and the history in the Acts.

34. 3°, Col. ii. 16, "Let no man therefore judge you in meat, or in drink, &c."

Ans. This refers to the errour of the Pharisees, who taught as doctrines the traditions of men (Matth. xv. 9), enjoining some things as necessary, without the authority of God, and forbidding others; by their precepts, "Touch not, taste not, handle not," Col. ii. 21. The errour consisted in teaching such things as necessary doctrines. But there is no errour, if in matters indifferent, some things be com-

Colossenses nec *conscientiis suis laqueum* injici sinant ab eorum imposturis. Non ergo peccant *Magistratus politici,* qui in rebus mediis aliqua subditis *præcipiunt* aut *prohibent,* utilitatis, ordinis, aut honestatis et decori gratia; citra tamen *opinionem necessitatis* ex utravis parte, quod ad rem ipsam *præceptam* vel *prohibitam* spectat. Peccant potius *Ministelli* illi (*Magistellos* rectius dixerim, ita *Magistraliter* omnia pronunciantes) qui innoxias *Magistratuum Leges* importune sollicitant, *dictaturam in conscientias* populi exercent, et quod non sapit ipsorum palato, id omne aut *impietatis* damnant extemplo, aut saltem *superstitionis.*

XXXV. Quod quarto loco ex eo urgent, quod nos Christus liberavit a *legibus Dei positivis;* ergo multo etiam magis a
legibus humanis: non uno modo peccat. Imprimis non illud 1
vere dicitur, Christum nos liberasse a *legibus Dei positivis:* quibus scilicet nunquam tenebamur. *Leges* enim *positivæ,* sive Dei, sive hominum, non *obligant* nisi eos duntaxat *quibus positæ sunt.* Dei autem *leges* illæ, quas *positivas* vocant, et a quibus nos per Christi mortem liberatos volunt, sive *Rituum* sive *Judiciorum, Judæis* tantum positæ sunt; nobis, hoc est,
populo Christiano, non item. Deinde, ubi quid Deus *fieri* 2
velit satis constat, non est nostrum ex *collatione comparatorum* importunius statuere, quid *fieri debuit.* Constat autem utrumque Deum voluisse: et ut *Leges ipsius positivæ* Hebræo populo a *Mose* traditæ non obligarent *Christianos:* et ut *Leges humanæ* a Magistratibus rite institutæ *subditos* obliga-

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manded and some prohibited by the Magistrate, for the sake of convenience, order, or decency, without being put forwards as necessary either way.

Sanderson notes the manner in which the "Little Ministers," or "Little Masters" of his time had assailed the harmless Laws of the Magistrates, and condemned as impious and superstitious all which they disliked, thus lording it over men's Consciences.

35. 4°, They urge that Christ has liberated us from the Positive Laws of God, therefore much more from the Laws of man.

Ans. 1st. Christ has not liberated us from the Positive Laws of God; we were never bound by them. Positive Laws are laws for those only to whom they are given. But what they call the Positive Law of God, namely the Ritual Law of the Jews, was never given to Christians.

Ans. 2d. When we know what *is* God's Will, we are not to try to prove by inference what *ought to be* his Will. Now we know that it is God's Will both that the Positive Law given to Moses should not

3 rent. Non animadvertunt denique qui ista objiciunt, eo argumento, si quidem valeret, tolli *legum humanarum* non *obligationem* solum, sed et omnem penitus *usum*. Non enim aliter nos Christus liberavit a *legum Mosaicarum obligatione*, quam earum *usum* ita tollendo ut non amplius essent nobis pro *legibus* habendæ. Si igitur eodem modo voluerit nos liberos esse ab *obligatione Legum humanarum*, voluisse eum quoque necesse est, ut nullæ extarent amplius *humanæ Leges*. Quod est *Anabaptistarum* et fanaticorum hominum delirium, nec ab ipsis admittitur qui ista objiciunt.

XXXVI. Objiciunt et illud [i] Jacobi Apostoli, *Unus est Legislator, etc.* *Deus* scilicet et *Christus*, [k] qui solus dominus est conscientiarum. Juris igitur *Christi* invasor est, et se in *Dei thronum* ingerit, quisquis sibi potestatem assumit *obligandi* aliorum conscientias. Respondeo, *Legislatorem* unum esse tantum *Supremum*, qui merum et *directum imperium* habet in conscientias hominum, ut eas obligare possit *per se*, et virtute ac auctoritate propria; *Deum* nempe et *Christum:* quod voluit Apostolus. Quod tamen non impedit, quo minus sint et alii *Legislatores* inferioris ordinis et gradus, qui per concessam sibi et *derivatam* a summo illo Legislatore *potestatem*, jus habeant et ipsi *leges condendi*, quæ ex *consequenti* conscientias obligent. Prorsus ut *Rex*, qui solus habet in regno suo *potestatem Legislativam αὐτοκρατορικὴν*, potest tamen per chartam suam alicui *communitati* vel *collegio* jus dare *condendi leges*, quæ obligent omnia illius corporis membra: non *virtute propria*, sed vi

[i] [iv. 12.]

[k] [supra iv. 8.]

bind Christians, and that human Laws given by Magistrates to their subjects should bind them.

Ans. 3d. The adversaries' argument, if it were of any force, would hold, not only against the *obligation* of Human Laws, but against their *necessity* also. For Christ has freed us from the Law of Moses, by taking away its necessity and use. If, therefore, he has in the same way freed us from Human Laws, he has taken away their necessity and use; which is the tenet of Anabaptists and Fanatics, but is rejected by our adversaries themselves.

36. 5°, They urge James iii. 12, "There is one lawgiver who is able to save and to destroy." Therefore he is an usurper of the right of Christ, who assumes the power of binding Consciences.

Answer. It is true, that there is only one Supreme Legislator who has a *simple* and *direct* authority over men's Consciences, so that he

donationis Regiæ et ex potestate sibi a Rege concessa. Gaudent hoc privilegio, ut omnes nostis, *Academiæ* nostræ, ut possint in legitima Convocatione *Leges* (quæ *Statuta* dicimus) rogare; *pœnas* delinquentibus irrogare; eadem *Statuta*, si sic expedire videbitur, abrogare et refigere. Cujus potestatis exercitium nemo tamen sanæ mentis existimaverit *juri Regis* νομοθετικῷ ullatenus derogare, vel ei fraudi esse posse aut præjudicio, nisi ultra definitos in charta donationis limites protendatur. Quin potius eximium est et singulare *Regiæ* αὐτοκρατορίας indicium, quod *Legislativam potestatem* non tantum ipse habeat, sed et aliis etiam (salvo tamen suo jure) infra certos limites habendam utendam concedere possit.

XXXVII. Reliquæ *objectiones* quum uno eodemque fere nitantur fundamento, una proinde eademque opera solvuntur. Attingam ergo breviter. Objiciunt *Tertio*, potestatem civilem 3
esse mere *temporalem;* non ergo pertingere ad *conscientiam* quæ res est quædam *spiritualis*. *Quarto*, finem legum 4
humanarum esse *pacem Reipublicæ externam*, non internam *Conscientiæ:* ergo et leges ipsas *exteriorem hominem* tantum obligare, non item, quæ intus est et latet, *Conscientiam*. *Quinto*, Magistratum *conscientias judicare* non 5
posse, ergo nec *leges* eis ferre: cum sit ejusdem potestatis *Leges dare* et *secundum Leges judicare*. *Sexto*, Magis- 6
tratum *legem ferendo* non habere *intentionem obligandi conscientias* subditorum, sed tantum *obligandi* ad id præstan-

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can bind them of himself, by his proper power; namely God and Christ, which is what the Apostle says. But this does not prevent other Legislators having a *derived* power of making laws, and thus, of binding the Conscience: just as the King can give to any chartered body, the University for instance, the power of making laws which bind the members of the body; and this, without any derogation of his absolute legislative power.

37. *Objection Third:* The civil power is merely temporal, and therefore cannot extend to the Conscience, which is a spiritual thing.

Objection Fourth: The end of Human Laws is the external peace of the commonwealth, not the internal peace of Conscience; and accordingly, laws bind the outer man only, and not the internal principle, the Conscience.

Objection Fifth: The Magistrate cannot judge men's Consciences; therefore he cannot legislate for them; for to legislate and to judge belong to the same authority.

Objection Sixth: The Magistrate, in legislating, has no intention of obliging the *Conscience* of the subject, but only of obliging him to *do*

dum quod lex imperat; quod si præstetur, perinde esse ad utilitatem Reipublicæ sive id ex *officii conscientia* fiat, sive non: et *effectus actionum* sat esse si commensurentur *intentioni agentium*, nec ultra extendi debere.

XXXVIII. Respondeo: et primum *universim*. His omnibus argumentis id tantum effici, Leges humanas non obligare *directe et per se*, aut vi propria; quod nos ultro largimur: qui *Obligationem* non aliam asserimus, quam quæ ipsis obvenit *ex consequenti*, et virtute generalis *præcepti divini* de præstanda sublimioribus potestatibus obedientia. Deinde ex hoc fundamento ad singulas Objectiones respondeo. *Ad Tertiam* dico, *Potestatem civilem*, cum sit mere *temporalis*, habere non posse *ex se*, et respectu *Objecti* circa quod proprie et immediate versatur, *effectum spiritualem;* proinde nec inducere ex se *obligationem spiritualem:* posse tamen habere effectum spiritualem *ex consequenti*, per derivationem a potestate superioris alicujus causæ, in cujus virtute operatur. Operatur autem *Magistratus*, quoties concessam sibi divinitus *potestatem Legislativam* rite et debito modo [1]exercet, in *virtute Dei* ipsius, et ex ejus *ordinatione:* qui et ipse *Spiritus* est, et ut *spirituum Dominus* et pater, imperium habet in *spiritus hominum.*

XXXIX. Ad *Quartam* dico; Etsi *pax* communitatis sit *res externa*, internam tamen conscientiam obligari ad eam

[1] [supra Sect. 30.]

what the law enjoins: and if this be done, he cares not whether it be done for Conscience or not. Now it is sufficient if the effects of actions be commensurate with the intention of the agent: therefore it is sufficient if the effect of human Laws be to regulate men's actions, without binding their Conscience.

38. To these Objections we answer, first, generally; that they all prove this only; that Human Laws do not bind directly and of themselves, or by their proper force; which we granted from the first. We claim for Human Laws only an Obligation arising by consequence, and in virtue of the divine precept that we are to obey the higher powers. And on this ground we reply to the special Objections:

Answer to the *Third:* The civil power, being merely temporal, has not of itself any spiritual effect, nor can it induce a spiritual obligation: but it may have a spiritual effect by derivation from a higher power. The Magistrate, when he exercises his power rightly, works by the ordinance of God, who is the Father of Spirits, and has dominion over the spirits of men.

omnibus modis licitis et honestis pro virili procurandam et conservandam: Eo quod præcepit nobis Deus, *Conscientiæ dominus,* ut *pacem,* cum privatam, tum multo adhuc magis publicam *diligamus* et *sectemur.* Nec inconvenit, *Conscientiam,* etsi sit *internum* quid, obligari ad *rem externam:* siquidem consurgit *obligatio* Conscientiæ, non ex *natura* vel aliqua conditione *rei* sive *objecti* in quod fertur, sed ex *voluntate* ejus qui habet *jus obligandi,* i. e. unius Dei.

XL. Ad *Quintam* dico, Potestatem *νομοθετικὴν* et *κριτικὴν, Legislativam* scilicet et *Judiciariam,* eidem personæ competere *originaliter;* nempe *τῷ ὑπερέχοντι,* ei qui *supremam* habet in subditos jurisdictionem: posse tamen *dispensative,* ex voluntate supremi Magistratus, ab aliis personis administrari, vel utramvis vel etiam utramque, prout ipsi collubitum est. Deus ergo, etsi solus habeat in conscientias creaturæ *potestatem αὐτοκρατορικὴν,* tum *leges ferendi,* tum *judicandi,* jure originali, proprio, et absoluto: *dispensationem* tamen utriusque potestatis potest ipse aut alteri *delegare,* aut sibi *reservare,* pro beneplacito suo. Proinde non esset hac ex parte absurdum, si quis concederet Deum Magistratui *potestatem obligandi conscientias* quadantenus delegasse, *judiciariam vero* in eas potestatem sibi integram reservasse. Sed nulla nos cogit necessitas, ut hoc concedamus, aut locutione utamur, quæ sit leni interpretatione juvanda. Neque enim illud dicimus, Deum dedisse Magistratui *potestatem obligandi* legibus suis subditorum Conscientias: sed hoc

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39. *Answer* to the *Fourth:* Though the peace of the Community is an external thing, yet may Conscience be bound to preserve it by all lawful and honest means: and this, God, the lord of Conscience, commands us to do: *Seek peace and ensue it;* peace private and public. Nor is there any incongruity in that Conscience, an internal principle, has obligations to an external thing: for the obligation of Conscience arises, not from the nature of the object to which it is referred, but from the Will of Him who has the power of obliging, namely, God.

[It might have been remarked that we have many obligations of conscience with regard to external things; as for instance, property.]

40. *Answer* to the *Fifth:* It may be granted that the legislative and the judicial power originally belong to the same person: but they may, one or both, be delegated to others by the supreme magistrate. God is both the Supreme Legislator and Judge of Consciences: but he may have delegated to the Magistrates the office of legislating, and retained to himself the office of judging. This would not be absurd to

potius (quod est aliquanto cautius et commodius loquendi genus,) Deum dedisse Magistratui *potestatem leges ferendi*, quæ (ex sola tamen auctoritate ipsius Dei) obligent subditorum Conscientias. Non enim, proprie loquendo, *Magistratus obligat* conscientiam ad parendum *legi*, sed *Deus obligat* conscientiam ad parendum *Magistratui*.

XLI. Et per hoc patet responsio ad *ultimam objectionem*. Concedo quidem *effectus actionum* non debere extendi ultra *intentionem agentium*. Ubi tamen sunt plura *agentia subordinata*, nihil impedit effectum actionis extendi ultra *intentionem inferioris agentis*, dummodo non excedat *intentionem agentis principalis*. Sicut in generatione monstri, (ut ex *Aristotele* pueri didicimus) effectus, qui est productio monstri, est *præter intentionem secundæ causæ*, sive naturæ naturatæ (ut loquuntur;) hoc est, *generantis:* sed non est *præter intentionem primæ causæ*, sive Naturæ naturantis; hoc est, *omnipotentis Dei*. Licet ergo Magistratus ferendo legem nullam habeat *explicitam intentionem obligandi* conscientias; attamen instituendo legem instituit id, quod ex intentione et *ordinatione Dei* habet *implicitam* et sibi necessario conjunctam *vim obligandi*. Atque hæc dicta sunto de *obligatione Legum humanarum* in generali. Ad quæstiones, sive *Casus dubios* particulares progrediar, (si Deus permiserit et per ambiguam valetudinem licuerit,) sexta feria proxima.

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say: but we prefer to say, in more cautious phrase, that God has given to the Magistrate the power of making laws; but that these laws oblige the Conscience by the authority of God alone. It is not the Magistrate who binds the Conscience to obey the Law; it is God who binds the Conscience to obey the Magistrate.

41. *Answer* to the *Sixth:* It is true that the effects of actions ought not to be extended beyond the intention of the agent. But where there are several subordinate agents, there is nothing which prevents the effect of an action to be extended beyond the intention of the inferior agent, provided it keep within the intention of the superior agent. Therefore, though the magistrate has no explicit intention of binding men's Consciences, yet he does that which, by the intention and ordinance of God, has the power, implicitly and necessarily, of binding men's Consciences. And so much concerning the Obligation of Human Laws in general. We now proceed to Doubtful Cases.

PRÆLECTIO SEXTA.

DE OBLIGATIONE LEGUM HUMANARUM EX PARTE *CAUSÆ MATERIALIS.*

PRO. VIII. 15.

Per me Reges regnant, et Legum conditores justa decernunt.

I. QUÆ de *Legum humanarum obligatione* dicenda proposui, ad duas quæstiones generales, velut capita, revocavi. Alteram, *An Leges humanæ obligent subditorum conscientias,* de qua quid mihi sentiendum videbatur, superiore prælectione exposui: Alteram, *Quatenus obligent;* quo pertinere dixi plerorumque *Casuum* et *Dubiorum,* quæ in hac materia occurrunt, decisionem. Quæ, quoniam nec pauca sunt, nec unius generis; ad vitandam rerum confusionem, et ut vobis aliquis qualiscunque *dicendorum ordo* et ratio constet: non ab re fore judico, totius institutæ tractationis rudem quendam σχηματισμὸν et *diagraphen* ὡς ἐν τύπῳ vobis ob oculos proponere. Quod autem in prioribus illis meis de *Juramenti obligatione* exercitationibus factum plerique vestrum meministis, idem mihi nunc denuo imprimis censeo faciendum: ut scilicet

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1. We had two general questions: Whether human laws oblige the consciences of subjects; and, How far they oblige. It is the latter question which brings before us Doubts and Cases of Conscience. These may be classed as follows.

There are Four kinds of cases already described by our author in his lectures, *De Juramenti Obligatione* (*Prælect.* III. 2), which apply to Laws also: namely, these may be questions which concern,

1. The Matter of the Law, (*Prælect.* VI. of this).
2. The Person of the Lawgiver, (*Prælect.* VII.)
3. The Form of the Law, (*Prælect.* VIII.)
4. The End of the Law, (*Prælect.* IX. X.)

Besides these, there are two other kinds of cases arising from,

5. The Persons subject to the Law.
6. The Conflict of Law and Conscience.

The cases belonging to special kinds of Laws, as Ecclesiastical Law, College Law, &c., need not be made a separate class, for they may be reduced to the other classes.

quæ ad *quatuor causarum genera* commode referri posse existimem, eo reducantur singula. Sed quoniam restare video adhuc nonulla, quæ istis finibus non possunt ita facile concludi: sunt et illis suæ quoque classes assignandæ. Eæque potissimum duæ: de *Personis,* quæ istiusmodi Legum obligationi subjacent, altera; altera de collatione *virtutis obligatoriæ* quæ *Legibus humanis* inest, cum ea quæ oritur ex *Conscientiæ judicio,* ex *Voto, Juramento, Promissione,* vel *Contractu,* ex *scandali* lege, aut siquid aliud sit aliunde *obligatorium:* quoties repugnare videntur invicem istæ *obligationes,* utra scilicet utri cedere debeat. Tertia enim classis ut addatur, propter *Legum species* quasdam, quæ videntur continere in se aliquid singulare, (quales sunt *Leges Ecclesiasticæ, Leges* quæ *Pœnales* dicuntur, *Collegiorum* et minorum Societatum localia *Statuta, Privilegia, etc.*) non erit fortasse admodum necessarium: cum possint ista fere ad aliquod e *quatuor Causarum generibus* aliquo modo reduci; si non ita apposite, ut istarum rerum curiosis satisfiat, at quantum sufficit instituto nostro, qui dum *quid rerum agitur* auditores intelligant, de *methodo* non ultra laborandum semper existimavimus. Agendum itaque (si Deus ad ea quæ proposui perficienda vitam, valetudinem, opportunitatem concesserit) primo loco de *Legum obligatione* quoad quatuor *Causarum genera:* proximo, de *personis* quæ ad Leges observandas obligantur; novissimo, de *obligationum* invicem pugnantium *comparatione:* Præmissis tantum una et altera distinctione, quæ in toto hoc negotio permagni erunt usus.

II. Sciendum ergo *primo,* quum sit ad *ordinis politici* finem in iis qui præsunt *duplex potestas* necessaria; *Directiva* scilicet ut subditi quæ sibi facienda sint intelligant, et *Coercitiva* (sic enim potius dicendum ex Analogiæ ratione quam *Coerciva*) sive *Coactiva,* ut ad imperata facienda, si ultro nolint, compellantur: (quarum utraque in *Legibus* ita continetur, ut illa in *præceptionibus* maxime, hæc in *pœnarum sanctione* cernatur;) exurgere ex duplici illa *prælati potestate,* duplex etiam, quod utrique potestati respondeat, *subditi de-*

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2. The Lawgiver, or Political Superior, has a twofold Power, Directive, and Coercitive or Coactive. The corresponding Obligations on the part of the subject are *Obedience* and *Submission.* These two Obligations are expressed Heb. xiii. 17: "*Obey* them that have the rule over you, and *submit* yourselves."

bitum; ὑπακοὴν scilicet et ὑποταγήν. Debitum *Obedientiæ,* respectu potentiæ *directivæ;* et debitum *Subjectionis,* respectu potentiæ *coercitivæ.* Subjectionem hic intelligo proprie dictam; nempe *generis* appellatione, ut alias sæpe fit, ad unam certam *speciem* restricta: Nam et *Obedientia* species est *Subjectionis* late sumptæ. Utrumque hoc debitum simul complexus est Apostolus, *Heb.* xiii. 17, et duabus illis vocibus significavit, *πείθεσθε καὶ ὑπείκετε, obtemperate præpositis vestris, et subditi estote.* Quarum illa, πείθεσθε, ad debitum pertinet *Obedientiæ,* sive *faciendi* quod a legitimo superiore *præcipitur:* hæc, ὑπείκετε, ad debitum *Subjectionis,* sive *patiendi* quod ab illo *infligitur.* Porro ut ex *duplici potestate duplex* oritur *debitum:* sic ex *duplici debito duplex* oritur *obligatio.* Nam et omne *debitum* trahit *obligationem:* et omnis *obligatio* supponit *debitum.* Est ergo *obligationis* humanæ legis genus unum, quo tenentur subditi *parere præceptioni* ipsius Legis; alterum, quo *subesse* tenentur *potestati* ipsius Legislatoris. Illa *obligatio* ad ὑπακοὴν est, hoc est, ad *obedientiam activam:* ista ad ὑποταγὴν, sive ad *obedientiam,* quam vocant *passivam:* nos *subjectionem* dicere maluimus.

III. Jam si quæratur, quatenus *Leges humanæ* obligent conscientias subditorum; dicendum *primo, Leges* omnes ab 1
habente legitimam potestatem latas *obligare* utcunque ad ὑποταγὴν, ad *subjectionem:* ita ut subdito non liceat supremæ potestati *vi et armis resistere,* sive is justa præceperit sive injusta. Perpetua hæc fuit mens et praxis *Christianorum* in primis Ecclesiæ seculis, sub gravissima hostium Christiani nominis tyrannide degentium; idque (ut *naturæ* ductum interim taceam et *rectæ rationis* lumen,) ex apertissima utriusque summi *Apostoli doctrina.* Sic *Petrus* circumcisionis Apostolus *Judæos,* sic Gentium doctor *Paulus* suos *Gentiles* sedulo instituit. Ille I. *Petr.* cap. ii. [v. 18], ubi *servis-familias* præcipit *dominis suis ὑποτάσσεσθαι non solum bonis et æquis,*

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3. Now as to the question, How far human Laws oblige, we answer,

First; Laws made by legitimate authority always oblige to *Submission,* so that it is never morally allowable to resist such authority by force, whether its commands are just or unjust. This was the invariable doctrine and practice of Christians in the first ages of the church. So Peter, the apostle of the Circumcision, enjoined the Jews, 1 Pet. ii. 18; so Paul, the teacher of the Gentiles, taught them,

sed et sævioribus illis, qui plagas ipsis nihil tale commeritis inferrent. Hic Epist. ad *Rom.* xiii., ubi *subjectionis* necessitatem pluribus urget, *resistendi* vero licentiam, quocunque in casu, quocunque sub prætextu, nemini concedit. Dicendum
2 *secundo; subjectione*, utut simpliciter necessaria, non tamen satisfieri officio, nisi et *obediatur* legis imperio, ubi id sine peccato fieri potest: et proinde subditum et ad ὑπακοὴν obligari in conscientia in rebus omnibus licitis et honestis. Hinc toties ab Apostolo disertim inculcatur illud ὑπακούετε, *Eph.* vi.;
3 *Col.* iii.; et alibi. Dicendum *tertio*, ubi observari non potest *Legis* præceptio sine peccato, *subditum* si patienter se *subjecerit* potestati *Legislatoris*, officio suo et debito fecisse satis; nec obligari in conscientia *ad faciendum* quod *lex* præcipit: imo obligari *ad non faciendum*, quum [a]ad illicita nulla possit esse obligatio. Semper igitur necesse est *subjici*, ἀναγκὴ ὑποτάσσεσθαι, non semper necesse est *obedire*.

IV. Porro, quum utrumque certum sit, tum *Conscientias* hominum *liberas* et esse, et esse debere, cui [b]*libertati* nulla potestas humana præjudicare aut possit aut debeat; tum etiam *obligationem* quoddam *vinculum* esse, et *necessitatem* aliquam inducere, quæ videtur cum justa *libertate* pugnare, (neque enim aut omnino *liber* est, qui *vinctus* est; aut *ad utrumlibet liber*, qui ad alterutrum *necessitate* aliqua arctatur :) ut liquido constet consistere posse cum justa *Conscientiarum libertate*

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[a] [cf. supra Prælect. v. Sect. 9.]

[b] [*Errat si quis existimat*] *servitutem in totum hominem descendere.* Senec. de Benef. [Lib. III. cap. xx.]

Rom. xiii. 2; where he gives several reasons for the necessity of *being subject*, but does not in any case allow *resistance*.

Second; Laws oblige to Obedience, as well as Submission, when there is no sin in obeying. This St Paul expressly enjoins, using the word *obey*, Eph. vi. 1 and 5; Col. iii. 20 and 22; and elsewhere.

Third; When the Law cannot be obeyed without sin, the subject does his duty sufficiently if he submits to the power of the Legislator. He is not bound to active obedience; on the contrary, he is bound not to be actively obedient. It is always necessary to submit (Rom. xiii. 5), it is not always necessary to obey.

4. *Objection.* How does the Obligation imposed by Human Laws agree with the Liberty of Conscience which man has and ought to have?

Answer. Laws may be understood as commanding the substance of the thing commanded, or its form. If the Legislator were to intend to inforce an obligation, or necessity of obeying, as to the

hanc, de qua nunc agimus, *Conscientiarum obligationem*, necessario nobis adhibenda est altera adhuc distinctio: Scilicet *præceptionem Legis humanæ* posse sumi dupliciter: vel *formaliter*, pro ipso actu præcipiendi; vel *materialiter* pro re præcepta. Legislator ergo si intenderet *obligationem* sive parendi *necessitatem*, quam subdito imponit, a *præceptione* suæ legis *materialiter* accepta deducere; hoc est, a necessitate ipsius *rei præceptæ*, quæ tamen in rei veritate ante *legem* illam latam non esset *necessaria:* Vim sane faceret ipso facto *Conscientiæ* subditi, quæ ipsius *libertati* adversaretur. Quod si *obligationem* eam non aliunde ducat, quam a *præceptione* suæ legis *formaliter* accepta, hoc est, a sua *præcipientis* legitima auctoritate, (*rei* ipsius *præceptæ* morali ἀδιαφορίᾳ in medio interim relicta, et in eodem statu quo ante legem latam fuerat permanente :) etsi *obligatio* sequatur, quæ parendi *necessitatem* conscientiæ imponat, illæsa tamen et integra manet interna *Conscientiæ libertas.*

V. Exemplo res, si cui obscura videatur, clarior evadet. Lege civili lata, *nequis carnes tota Quadragesima comederet:* si Legislator in *proœmio* vel *corpore* ipsius Legis alicubi significaret, hoc se propterea subditis imperare, quod *impium* sit aut *illicitum* eo tempore carnibus vesci; esset hoc quidem subditorum *conscientiis* laqueum injicere, earumque *libertatem*, quantum in ipso esset, labefactare. Quod si expresse significaret *Legislator*, se de re alias et *in se libera*, ad Reipublicæ

Substance of the thing commanded, the thing not being really morally necessary, he would then violate the subject's liberty of conscience. But if he only impose an obligation as to the Form of the thing commanded, which Form is to be determined by his legitimate authority, (the thing itself remaining morally indifferent as before,) although there arises an Obligation binding upon the Conscience, there is no violation of Liberty of Conscience.

5. To explain this by an Example. If a Law be made, that no one shall eat flesh in Lent; and if the Lawgiver, in the preamble or in the body of the Law, should declare, that the command is given because it is contrary to piety or to morality to eat flesh at that time; this would be to interfere with the Liberty of Conscience of the subject. But if the Legislator should say plainly, that in a matter in itself indifferent, he has made such a Rule, for the benefit of the commonwealth, or in order that the people, being Christians, may fast after the manner of the ancient church; or if, from the words of the Law, or from any other evidence, it appears that the Legislator does not intend to fasten upon the thing commanded any judgment of its

aliquam commoditatem sic statuisse, aut ut inde populus Christianus ad veteris Ecclesiæ exemplum occasionem caperet *asceticæ disciplinæ* utcunque exercendæ; vel si ex verbis Legis aut alicunde constare posset, *Legislatorem* ea lege non intendisse aliquam *necessitatis* opinionem *rei ipsi imperatæ* affigere: nulla subditorum *conscientiæ*, ejusve *libertati*, hoc pacto fieret injuria. Longe enim alia res est, cum quid propterea a Magistratu *præcipitur*, quod putetur esse *necessarium;* aut *prohibetur*, quia putatur esse *illicitum:* alia, cum quid tum demum incipit haberi *necessarium*, postquam est a Magistratu *præceptum;* aut *illicitum*, quia est ab eo *prohibitum*. *Prior* illa *necessitas*, quæ se habet *antecedenter* ad Legem, et ab ea supponitur, ut ejus *causa* aliqua, *conscientiæ libertati* repugnat: at *posterior* ista, quæ *consequenter* se habet ad legem, et ab ea oritur ut *effectus* ejus, non repugnat. Cujus discriminis ratio est; quod *necessitas* illa *antecedens* quam lex supponit, necessario requirit assensum aliquem *judicii practici:* ad *necessitatem* autem *consequentem* quæ ex lege oritur sufficit, consensus *voluntatis* ad faciendum id *opus externum* quod lege præcipitur. *Actus* autem *voluntatis* non potest *libertati conscientiæ* præjudicare, sicut præjudicat *actus judicii:* quia *voluntatis actus* sequitur conscientiæ *dictamen*, ut *effectus* sequitur suam *causam; actus* vero *judicii* præcedit illud dictamen, ut *causa* præcedit suum *effectum*.

VI. His distinctionibus præmissis, ad *Dubia* pergo: ubi

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necessity; there would be no violation of the Liberty of Conscience of the subject. For it is a very different matter whether a thing be commanded by the Magistrate, because it is thought morally necessary, or be held to be necessary because it is commanded by the Magistrate; a very different matter whether a thing be prohibited because it is deemed morally wrong, or be held to be wrong because it is prohibited. The former necessity, which is conceived as antecedent to the Law, and is assumed as the course of the Law, is repugnant to Liberty of Conscience; the latter necessity or obligation, which is consequent to the Law, and an effect of the Law, is not repugnant. The reason of this difference is, that that antecedent necessity, which the Law presupposes, requires an assent of the Judgment; but the consequent necessity, which the law creates, requires only the consent of the Will, to do the prescribed external act. Now an act of the Will cannot interfere with Liberty of Conscience, but an act of the Judgment may; because an act of the Will follows the dictate of Conscience, as effect follows cause, but an act of the Judgment precedes that dictate, as cause precedes effect.

primo loco illa occurrunt, quæ ad *Materialem causam* pertinent, hoc tempore sola discutienda. DUBIUM itaque PRIMUM esto de materia *Impossibili*. De qua dico *primo*, Legem de re prorsus *impossibili* ferri non debere: si feratur, tyrannicam esse, et de jure nullam, nec quenquam obligare in con-
scientia. Ratio *prima :* quia leges feruntur de *actibus* ut ab 1
homine *agendis*, qui est *liberum agens : libertas* autem dicit *potestatem ad utrumlibet :* sed in rebus *impossibilibus* non est libera *potestas ad utrumlibet*, ut per se patet. Ratio
secunda. Nemo potest jure *obligari* ad id faciendum, cujus 2
omissio non potest ei imputari *ad culpam*, nec debet ei imputari *ad pœnam ;* (omnis enim *obligatio* aut ad *culpam* est, aut ad *pœnam*, vel etiam utramque): Sed *rei impossibilis omissio* non potest alicui imputari ad *culpam*, nec debet alicui imputari ad *pœnam:* ergo etc. Sed quod *rei impossibilis* nulla possit esse obligatio, (sive ea sit ex *natura rei*, sive ex *circumstantiis*, sive alio quocunque modo *impossibilis*) est a me jamdudum ex hoc loco satis confirmatum, cum de [c] *Juramenti obligatione* disserui; nec opus est repetitu.

VII. Dico *secundo*, Legem de re plerisque *possibili*, sed quæ videtur multis, aut paucis aut uni forte alterive *impossibilis* futura, posse quidem si sit ex usu Reipublicæ licite ferri; non tamen nisi admodum gravis subsit causa, et pos-

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[c] Prælect. II. Sect. 12.

6. In this lecture we shall consider only the first of the kinds of Cases above mentioned, (Sect. 1); namely, those where the Doubt depends on the matter of the Law.

FIRST DOUBT. Of Things Impossible. Our judgment is, that Laws commanding things impossible ought not to be made; if made, are tyrannical, and not obligatory.

First Reason: Laws suppose man a free agent; but man is not free to do things impossible.

Second Reason: No man can be obliged to do that of which the omission cannot be imputed as a fault, and ought not to be punished; (for all obligation is either an obligation under fault, or under punishment, or both. *Prælect.* v. Art. 5.) But the omission of an impossible thing cannot be imputed to any one as a fault, and ought not to be punished. Therefore, &c.

See on this subject the author, *De Juramenti Obligatione, Prælect.* II. § 12.

7. SECOND DOUBT. Of Things not absolutely impossible, but very grievous, such as the subject cannot perform without great inconvenience, loss, ruin, or danger of life. Our judgment is, *First,* that

tulet manifesta *necessitas:* latam vero, omnes eos *obligare* qui eam servare possunt, reliquos autem *non obligare.* Ut si *tributum grande* in necessarios Reipublicæ usus imperetur, cui solvendo aliqui *subditorum* non sint pares: qui pauperiores sunt quam ut solvere possint summam lege imperatam, non obligari in conscientiæ ad id faciendum quod ab ipsis fieri non potest, ex jam dicta *hypothesi* certum est. Obligantur tamen apud eos qui præsunt, tenuitatem suam *aperte,* sed *sincere* id et sine mendacio, profiteri : et nisi possint ab eis aut omnimodam a lege *exemptionem,* aut aliquotæ saltem summæ imperatæ partis *remissionem* mereri, quantum possunt conferre in publicum. Quia qui non potest quod debet, [d] *debet* tamen quod potest.

VIII. Dubium secundum. De re lege imperata, non *impossibili,* sed valde tamen gravi et *onerosa,* et quam subditus præstare non potest sine summo suo incommodo, damno,
1 vitæ discrimine, vel totius rei familiaris ruina. *Dico primo* Legislatorem, si prævideat hoc futurum, debere aliqua *cautione* in ipsa *lege ferenda,* quam commode fieri potest; pro-

[d] Μηδὲ ὅτι τῆς ἀξίας λείπει, τὸ πᾶν ἐλλίπῃς.—Gregor. Nazianz. ad Julian. Orat. ix. [Sect. 25, Opp. Tom. I. p. 154 A. ed. Paris. 1630.]

Debeone omittere quod possum, quoniam quod debeo minime possum?—D. Bernard. Epist. clxxv. [Opp. Tom. I. p. 171 D. ed. Bened.]

the Legislator, if he foresee such evils, should provide some remedy for them in the law itself: or, if this cannot be done for fear of giving room for evading the Law, he should provide some means in the execution of the Law which may prevent its pressing unduly on good subjects.

Secondly, We judge that the subject, in such a case, is bound to obey, even to the extent of the utter ruin of his property, if the public good require it. As when the country being invaded, a law is made that within so many miles from the shore, crops should be laid waste, granaries burnt, suburbs destroyed, meadows flooded; all citizens are bound to obey. And this, not only because if the country be lost, the calamity will soon reach private fortunes; but also, and mainly, as a matter of Conscience, because the public good is to be preferred to private.

Thirdly, We judge, that a subject, except there be some great public necessity or danger, is not bound to obey a very oppressive law, which leads to his ruin or danger of his life; but is bound (according to the general rule, see above, Sect. 3,) to bear the harm and disgrace which are imposed by the higher powers in consequence of disobedience.

videre huic malo aliquod remedium. Id si non possit ita commode fieri in ipsa *Legis formula*, (ne vafris hominibus, in ejusmodi occasiones plus satis attentis, aperiatur isto pacto rimula aliqua qua evadant et *vim legis* eludant;) illud saltem, quantum in ipso est, procurare debere, ut in *lege* [e] *exequenda* aliquis modus adhibeatur, ne *lex* alias *utilis* et *necessaria* honesto cuiquam civi *fraudi* vel *nocumento* sit. *Dico se-* 2
cundo, subditum eo quo jam supponimus modo aggravatum, teneri in conscientia *legi obedire*, etiam cum ruina totius rei familiaris, si *boni publici* ratio aliqua evidens et necessaria id postulet. Ut si *lex* feratur, exercitu hostili regnum invadente, ut in agris *segetes* omnes per aliquot milliarium a litore spatium devastentur; omne *frumentum* in horreis et apothecis, quod non posset alio deportari, exuratur; *ædes suburbanæ* diruantur; *prata* immissis fluminibus submergantur: obligatur omnino unusquisque civium ei *legi* parere, atque imperata libenter et alacriter facere, ut cum jactura *rei privatæ* redimat *salutem publicam*. Idque non ea solum ratione, quod certum sit, prodita hostibus (intempestiva frugalitate) *patria*, calamitatem in *privatos quosque cives* propediem emanaturam: sed ex *officii* quoque *conscientia* vel maxime, quod sit omni viro bono *bonum publicum* privato anteferendum. *Dico tertio*, 3
subditum, nisi insignis aliqua appareat *necessitas*, vel publici periculi *metus*, ordinarie non teneri *valde onerosæ legi* parere, cum certa rei domesticæ ruina, aut capitis periculo: Teneri tamen, ut ante generatim dictum est, (quod et in omnibus fere casibus observandum moneo, ne sit necesse id ipsum multoties repetere,) quicquid sibi *injuriæ* vel *contumeliæ* a sublimioribus potestatibus illatum fuerit, id *æquo animo perpeti*, nec eis ullatenus *resistere*.

IX. Dubium tertium, de re *Necessaria;* Si Lex humana aliquid *præcipiat*, quod fuit ante *necessarium* et Lege Dei præceptum; aut *prohibeat*, quod fuit ante *illicitum*, et lege Dei prohibitum: quæ sit *Obligatio*. Respondeo breviter, subditum illa *lege* simpliciter obligari. Nam *primo*, obligatio quæ 1
præfuit vi *Legis Dei* non impedit effectum *Legis humanæ*,

[e] *Χρὴ τοὺς νόμους μὲν τίθεσθαι σφοδρῶς, πρᾳοτέρως δὲ κολάζειν ἢ ὡς ἐκεῖνοι κελεύουσι.*—Isæus ap. Stobæum, [Florileg. T. 48. 25.]

9. Third Doubt. Of Things Necessary. If a Human Law commands what was before morally necessary, or prohibits what was

excludendo *obligationem novam:* quum possit quis ad idem officium *pluribus vinculis* obligari, ut superiore lectione satis
2 ostendimus. Cui rationi et illa adjicienda est *secundo, Legem humanam* addere plerunque aliquid *legi divinæ:* determinando scilicet actum (quoad substantiam suam, *Lege Dei* imperatum, proinde et *necessarium,*) quoad *modum, quantitatem,* aut aliam sui *circumstantiam,* quæ fuit ante *libera;* vel etiam adjiciendo *legi divinæ* prohibenti *rem illicitam* determinationem aliquam, quoad *gradum criminis,* vel *pœnæ genus,* ejusve mensuram, aliaque ejusmodi. Exempli gratia, *Coetus publicos* ad officia sacri cultus peragenda haberi, divini juris est; at quibus *horis,* quo *loco,* populo sit conveniendum; qua *verborum forma, quo situ corporis* in singulis sacrorum officiorum partibus sit utendum, ceteraque similia, *constitutionibus humanis* definienda restant. Sic ne *furtum* fiat, *lex divina* prohibet: sed quod *furti* genus quo *supplicii* genere sit puniendum, a *lege humana* est. Habet utique ex hac *determinatione* rei generalis et *Lege Dei* indeterminatæ *Lex humana,* quod subditi conscientiæ inducere possit *novam obligationem,* ab illa priore obligatione non modo *numero* diversam et ratione *termini,* in quantum aliunde pendet, sed *specie* quoque diversam, et ratione *materiæ,* quia versatur circa aliud objectum. *Prior* enim illa obligatio, quæ a *Lege Dei* oritur, est ad rem ipsam quoad *substantiam:* hæc *posterior,* quam superinducunt *leges humanæ,* ad rei *modum* est, aut aliquam ejus *circumstantiam.*

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before morally wrong. Our judgment is, that the subject is simply and absolutely bound by such a Law.

First Reason: The obligation of the Moral Law, the Law of God, does not exclude a new obligation, as before stated, *Prælect.* v. Sect. 10.

Second Reason: The Human Law mostly adds something to the Divine Law, determining, for an act which is only substantially commanded by the Divine Law, the manner and circumstances: or, to an act prohibited by the Divine Law, affixing the degree of criminality, or the kind of punishment. For instance, Assemblies for Public Worship are commanded by the Divine Law; but the time, place, form of words, posture of body, remain to be disposed by human constitutions. So again, Theft is forbidden by the Divine Law; but how each kind of theft is to be punished, is matter of Human Law. And thus the Human Law produces not only a new and different obligation from the Divine Law, by determining what that left indeterminate; but also an obligation different in kind, and relating to other matter. For the former obligation refers to the substance, but the latter to the manner or circumstance.

X. Dubium Quartum, de re *turpi* et *illicita*, quod est sane magni momenti dubium, et multos casus continet: quia omnes fere conditiones, quæ ad legem rite constituendam requiruntur, ad unam [f] *Justitiam* reducuntur. Non ob eam duntaxat rationem, quod *universalis Justitia*

[g] συλλήβδην πᾶσ' ἀρετὴ 'στὶ,

et universas virtutes suo ambitu complectatur: sed ob id etiam præsertim, quod *Justitia particularis*, et speciatim illa quæ *Legalis justitia* dici solet, præ reliquis virtutibus omnibus, præcipuum sit et quasi unicum *Rerumpublicarum* et omnium humanarum societatum columen. Circa hoc dubium quæritur *primo*, *An propter utilitatem publicam ferri debeat lex injusta?* Dicitur in ea fuisse sententia *Nic. Machiavellus*, ut diceret Legum debitam *materiam* esse eam, sive *justam* sive *injustam*, quæ *statui politico* conservando augendoque esset commodissima. Quum enim *potestatis civilis* (ex ipsius sententia) finis sit *sui conservatio*, et imperii *amplitudo;* nec possit ea potestas strenue *conservari*, multo autem minus *proferri* imperium, si leges omnes, omnia Principum consilia, ad exactam *justitiæ* et *honesti* normam essent exigenda: eorum qui præsunt interesse videtur, ita inflecti nonnunquam in alteram partem *honesti* regulam, ut *utilitati publicæ* possit inservire. *Finem* enim in omni re, optimam esse *mensuram mediorum*. Utut sit de *Machiavello*, fuit illa certe sententia magni nominis olim apud [h] *Lacones* viri, qui palam id esse *honestum* pronunciavit quod esset *Spartis utile*. Affertur firmandæ huic sententiæ dictum illud *Horatianum*

[i] *Ipsa... utilitas justi prope mater et æqui:*

Exemplum etiam *Turcarum*, quod quam ipsis salutare fuerit

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[f] πάντα τὰ νόμιμά ἐστί πως δίκαια. Aristot. Eth. Nic. Lib. v. [cap. iii.]

[g] Theognis. [v. 103, *ed. Welcker.* laudatus ab Aristotele, Eth. Nic. v. iii.]

[h] [sc. Lysandri: vid. Plutarch. Lacon. Apophth. p. 227, ed. Hutten.]

[i] Lib. i. Satir. iii. [v. 98.]

10. Fourth Doubt. Of Things Wrong and Vicious. Questions belonging to this head are generally to be decided by the consideration of Justice.

First Question. Whether an unjust Law may be made on account of public utility.

The affirmative has been held by Machiavel, by Lysander the Spartan, by Horace, by the Turks; and, as appears by their actions, by some who call themselves the purest Christians.

res ipsa comprobavit, atque eventus; qui hoc nixi principio Imperii sui fines longe lateque per *Asiam, Africam, Europam,* felicissime produxerunt. Quo pessimo principio nisi reipsa niterentur qui tamen se profitentur *maxime* (pene dixeram *solos*) *Christianos,* et purioris Religionis instauratores audire gestiunt; sub tot *sacrilegiis, perjuriis, seditionibus, bellis, tumultibus, tyrannide,* non ingemisceret hodie passim *orbis Christianus.*

XI. Sed contra. Non debent *principes terræ* uti ea potestate quam a Deo acceperunt contra ipsius *voluntatem,* aut aliorsum quam ipse intendit. Neque enim tam data est illis ea potestas ut *dominis,* quam a Deo *credita* ut [k]*administris: credita* autem eo fine, ut *justitiam* colerent, non ut *tyrannidem* exercerent et injuste dominarentur. Quod vel ex proposito textu manifestum est: *Per me Reges regnant, et principes justa decernunt:* acsi id demum esset *regnare,* et vere *principem agere,* quod *justum* sit, hoc tantum *decernere.* Quin et Prophetæ passim severam Dei iram et vindictam proclamant adversum *Reges* et *Principes,* qui [l]*iniqua decreta* statuerant, et meditati erant [m]*iniquitatem* sicut *Legem.* Neque vero est, quem hujus mundi *Politici* dicunt, potestatis civilis finis, *Imperii dilatatio:* sed [n]conservatio populi *in pace et tranquillitate, cum omni pietate et* [o]*honestate,* est autem *Justitia* publicæ pacis, siqua alia, conservatrix optima. Ut enim *justitia fidei* pacem conscientiæ internam, ita *justitia legalis* pacem Reipublicæ externam et parit et conservat.

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[k] λειτουργοὶ Θεοῦ καὶ διάκονοι, Rom. xiii. 4—6. [conf. Prælect. v. Sectt. 24, 30: Præl. VII. Sect. 15.]

[l] Esai. cap. x. v. 1.

[m] Psalm. xciv. v. 20.

[n] [conf. supra Prælect. v. Sect. 19.]

[o] [παρακαλῶ οὖν ποιεῖσθαι δεήσεις ὑπὲρ πάντων τῶν ἐν ὑπεροχῇ ὄντων, ἵνα ἤρεμον καὶ ἡσύχιον βίον διάγωμεν ἐν πάσῃ εὐσεβείᾳ καὶ σεμνότητι.] 1 Tim. cap. ii. vers. 2.

11. But the Arguments against this are decisive. *First:* Princes are not to use the power given them by God in a manner contrary to the will of God: for their power is given to them not as absolute masters, but as ministers; and entrusted to be used for the purposes of justice, not of tyranny, Rom. xiii. 4, 6; Prov. viii. 15. Accordingly the prophets proclaim the anger of God against princes who decree injustice, Isai. xi.; Psal. xciv. 20.

Secondly: the true end of civil power is not the extension of empire, but the preservation of peace and quietness in all piety and honesty. Now Justice is the best preservative of peace; as Subjective Justice, that is, integrity, preserves internal peace of mind, so

[p] *Erit fructus justitiæ pax,* inquit Propheta: imo et Thebanus Vates

[q] φίλη ἁσυχία δίκας θύγατηρ.

Neque *Horatiani* dicti ea mens est, quasi censuisset mera *utilitate* metiendum esse *honestum,* qui longe aliud spectavit eo versu; nimirum *utilitatis publicæ* et communis boni intuitu adductos initio homines rudes adhuc et vagos, ut in unum coirent, *societates* colerent, justis *legibus* et *pœnis* vim, scelera, injurias coercerent. Quæ denique a *Turcis* ducuntur (quos videtur Deus eo potissimum fine excitasse, ut eo quasi *flagello* summam Christianorum perfidiam aliaque peccata corrigeret,) aut alias a prospero *rerum successu* trahuntur in *malæ causæ* præsidium argumenta, *Alcoranum* magis sapiunt spurci nebulonis, quam puritatem *Evangelii* Servatoris Christi.

XII. *Quæstio secunda,* Lex *injusta,* etsi fieri non debuit, si tamen lata fuerit, an *obliget conscientiam* subditi, ita ut eam teneatur observare. Multa enim quæ [r] *fieri non debent, facta* tamen *valent:* et fieri potest, ut quod non potuit sine peccato *præcipi,* possit tamen sine peccato *præstari,* ut in præcedentibus lectionibus abunde confirmavimus. Ratio dubitandi est, quia vera *obedientia* non est *disputatrix.* In hoc enim proprie consistit *obedientiæ* ratio, ut se quis alterius

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p Esai. cap. xxxii. v. 17.

q Pindar. [Pyth. viii. 1, ubi tamen φίλοφρον legitur.]

r [conf. de Juramenti Oblig. Prælect. II. Sect. 14.]

Legal Justice preserves external peace of the state. See the passages from Isaiah and Pindar in the text.

When Horace says, *Ipsa utilitas justi prope mater et æqui;* he does not mean that what is morally excellent is to be measured by utility, but that the perception of a common utility by savage men is a moral education for them.

The argument from the Turks savours rather of the Alcoran than of the Gospel.

12. *Second Question.* An unjust Law, it appears, ought not to be made; but being made, does it bind the conscience? Is it among the things of which we say, It ought not to have been done: being done, it is valid?

For it may be that what cannot be commanded without sin, may be performed without sin. True obedience is not disputatious.

But we have already shewn (*Prælect.* v. Art. 7), that unjust Laws do not bind the conscience.

To the arguments there given in support of this opinion, we may add, that no inferior power can oblige in opposition to a superior

voluntati sine aliqua disceptatione subjiciat. *Nimis delicata est obedientia,* ut scite [s] Bernardus, *quæ transit in genus causæ deliberativum.* Respondendum tamen breviter, subditi conscientiam ejusmodi lege non teneri: quæ fuit superioris Prælectionis *Conclusio prima,* et ibi etiam pluribus confirmata. Et potest etiam, siquis adhuc plura desideret, inde ulterius probari, quod nulla *potestas inferior* potest obligare contra voluntatem *superioris potestatis;* ergo quum sit *Dei potestas* omni *humana potestate* superior, non potest ulla cujuscunque *hominis potestas* obligare contra *voluntatem Dei,* qui lege sua prohibuit omnia prava et turpia. Unde [t] *Augustinus, Legem non videri,* ait, *quæ justa non fuerit.* Et per hanc rationem solvitur argumentum a ratione *obedientiæ* ductum, concedendo subditum debere se *voluntati superioris* sine disceptatione subjicere; *Superioris* nempe *supremi,* in cujus voluntatem ultimate resolvitur *obedientia:* non autem *superioris subordinati,* si voluntatem ipsius voluntati supremi illius constet adversari. Est autem Deus [u] absolute *summus Imperator:* cujus utique nuda *voluntatis* significatio sufficit ad inducendam *parendi obligationem;* præsertim cum sit certissimum *voluntatem* ipsius non posse esse *injustam.* Paruit itaque *Abrahamus* Deo ea mandanti, quæ nisi præcepisset ipse Deus, videri potuissent non dura solum et *iniqua,* sed et *impia* scelerisque plena. Scilicet ut patre, patria, cognatione relictis, in terram longinquam pariter et incertam, pauper,

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[s] [de Præcept. et Dispens. cap. x. Opp. Tom. I. p. 509. A. ed. Bened.]

[t] [de Libero Arbitrio, Lib. I. cap. v. n. 11, Opp. Tom. I. p. 572. A.]

[u] *Quod jubet homo, prohibet Deus: et ego audiam hominem, surdus Deo?* Bernard. Epist. 7. [Sect. iii. Opp. Tom. I. p. 17. C.]

power: therefore no human power can bind us to anything which is wicked, and so, contrary to the will of God. Whence Augustine says, that an unjust Law is hardly a Law.

And hence the answer to the argument, that obedience is not disputatious. The subject is to submit himself to the *supreme* authority without disputing it, but not to any subordinate authority, when contrary to the supreme. And thus, we must obey God always.

So Abraham obeyed the command of God, and did what, not so commanded, would have been wrong and wicked. But the commands of men are to be examined. 1 Thess. v. 21, applies to commands as well as doctrines. Hence we reject absolutely authority, such as papists ascribe to the Pope, and religious orders to their Heads.

exul, hospes proficisceretur: imo ut *filii unigeniti*, in quo uno reposita essent non omnia modo solatia subsidiaque senectutis suæ, sed et spes omnis promissionum Dei, propria manu jugulum solveret, eumque aris impositum victimam offerret tam sæva imperanti Deo. Recte ille quidem, et ut virum decuit, qui dici mereretur *fidelium pater*, et esset universo orbi inconcussæ fidei probatissimum exemplar; qui se Dei dicto sine hæsitatione audientem præbuit. Ast *hominis* cujuscunque imperata, quum sit *errori* et *peccato* obnoxius omnis homo, possitque ejus voluntas esse prava, fas est, imo et ubi justa subest suspicandi causa, opus est, examini subjicere. Monitum illud Apostoli, [x] *Omnia probate: quod bonum est retinete,* ad *superiorum* jussa non minus idonee, quam ad *placita doctorum*, de quibus tamen peculiaris ibi sermo est, accommodari jure optimo poterit. Apage ergo κατακυριευόντων ὑπέρογκα illa, *Sic volo, sic jubeo.* Apage illam *Papicolarum*, cum turpem *adulationem*, qui nefas ducunt cuivis homini *Jovis sui Laterani* effata quovis prætextu sollicitare: tum *cæcam* illam *obedientiam*, qua voto se obstringunt Religionem ingressi, superioribus sui ordinis in omnibus et singulis, *sine discretione* (sic enim loquuntur) obedire.

XIII. Quæritur *tertio*, Liceatne saltem subdito *cedere jure suo* hac ex parte, et quamvis non *obligetur*, legi tamen istiusmodi *sponte sua* parere. Respondeo, ne hoc [y] quidem licere: quia *lex Dei* simpliciter obligat ad *non faciendum* aliquod *turpe*, vel *illicitum*. Injusta ergo lex, (*injustam* intellige eo sensu, in quo nunc loquimur, injustam *ex parte materiæ*) non potest *licite servari:* quia non potest Deus *licite offendi.* Quicquid enim *legi Dei*, aut *naturæ lumine* notæ et cordibus inscriptæ, aut in *verbo scripto* revelatæ, adversatur, non est ob quodcunque vel *detrimentum* proprium, vel proximi *scandalum*, vel prælati sive *gratiam* promerendam, sive declinandum *odium*, viro Christiano admittendum.

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[x] 1 Thess. cap. v. vers. 21.

[y] *Pura mala, ut nunquam juste juberi, sic nec licite possunt fieri.* Bernard. Epist. vii. [Opp. Tom. I. p. 46. c.]

13. *Third Question.* Is it, in such a case, allowable to waive our rights, and do spontaneously what is so commanded?

We answer, No; this is not allowable. For the Law of God is absolute and admits of no exception. So the Christian Martyrs judged: and so the apostles, and the Jewish martyrs, Acts iv. 29, Dan. iii. 18.

Da veniam, Imperator: tu carcerem: ille gehennam: Sic olim veteres illi Christiani. Sic ante eos domini Jesu Christi Apostoli, [z] *Oporteatne vobis magis obaudire quam Deo, ipsi judicate:* et ante eos etiam Hebræi adolescentes, [a] *Notum sit tibi Rex, quod nolumus adorare imaginem auream quam tu erexisti.*

XIV. Quæritur *quarto*, Quæ *Lex* ita *injusta* censenda
sit, ut non solum non obliget, sed et ei parere non liceat.
Respondeo, *Legem* posse esse *injustam* ex multiplici causa.
1 *Primo*, ex parte *causæ Efficientis:* Si feratur a non habente
legitimam potestatem. Et ista est *injusta*, ob defectum *jus-*
titiæ commutativæ: quia plus sibi assumit *lator*, quam debet,
aut ei ex æquo convenit. Propterea nec subditum *obligat* ad
obediendum: potest tamen subditus, si ipsi videbitur expedire,
2 nec aliunde impediatur, *cedere jure suo*, et legi obedire. *Se-*
cundo ex parte *causæ Finalis:* Si non tendat in *bonum pub-*
licum, nec conservet jura communitati debita. Ista est *injusta*,
ob defectum *Justitiæ* quam *Legalem* vocant, quæ semper
intendit *bonum commune*, et ne quid Respublica detrimenti
capiat. Sed enim, *injusta* ut sit, *obligat* tamen subditum:
quia *subditus* non est legitimus et idoneus judex *Justitiæ*
Legalis. Et si ex ipsius *obedientia* sequatur aliquid quod sit
Reipublicæ incommodum vel noxium, non est *id* [b] *ei* imputan-
dum, qui quod suarum erat partium rite obivit; sed *prælato*,

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[z] Act. cap. iv. vers. 19. [a] Dan. cap. iii. vers. 18.

[b] ...οὔτι...ὔμμες ἐπαίτιοι, ἀλλ' Ἀγαμέμνων,
ὅσσα σφι προΐει.
Hom. Il. α'. vv. 335, sq.

14. *Fourth Question.* What Law is to be deemed so unjust that not only it does not oblige, but that it is not allowable to obey it?

We answer by explaining the kinds of Injustice which may affect Laws.

1. A Law may be unjust on the part of the Efficient Cause, the maker; being made by one who has no due authority. Here is a defect of *Commutative Justice*, because the Maker of the Law assumes more than belongs to him. Such a Law does not oblige; but the subject, if he please, may waive his right and obey.

2. A Law may be unjust with regard to the Final Cause, as for instance, if it do not tend to the public good, nor respect the rights of the community. Here is a defect of *Legal Justice*, for that always aims at the general good. Such a Law does oblige, for the subject is not the proper judge of legal justice. And if any harm

cui ex officio incumbit *boni publici* procuratio. *Tertio*, ex 3
parte *causæ Formalis:* Si lex onera et favores, præmia et pœnas iniqua proportione et non pro civium merito dispenset. Ista est *injusta*, ob defectum *Justitiæ distributivæ:* quæ omnia jubet ex æquo singulis, prout quisque commeritus est, tribuere. Et ista etiam quantumvis *injusta*, *obligat* tamen; pariter ut illa quam proxime dixi: idque ob eandem rationem, Quia scilicet istarum rerum dispensatio ad *subditi* officium non spectat, sed *prælati*. *Quarto*, ex parte *Causæ Materialis*, 4
de qua nunc agimus: si lex jubeat rem turpem, inhonestam, vel quovismodo illicitam. Ista *injusta* est ob defectum *Justitiæ* quæ dicitur *Universalis*, quæ debitam rectitudinem in omni actione requirit. Hæc sola tam non obligat subditum *ad obediendum*, ut omnino obliget *ad non obediendum*.

XV. Quæritur *quinto*, Quænam *justitia* requiratur, vel quanta sufficiat, ad hoc, ut *lex* aliqua dicatur *justa*, et censeri debeat *obligatoria?* Pro responsione *dico, Primo*, non neces- 1
sario requiri, ut id quod lege imperatur sit *justum positive*, quod Philosophi honestum dicunt; hoc est, ut sit actus alicujus *virtutis:* sed sufficere si sit *justum negative;* id est, non injustum vel turpe, quales sunt actus omnium *vitiorum*. Alias non possent ferri leges de rebus *mediis* et *adiaphoris;* quæ tamen, ut [c]mox patebit, sunt *materia legum* aptissima. Dico

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[c] [infra Sect. 22.]

arise from his obedience, this is not chargeable to him, but to the Lawgiver, whose business it is to look to the general good.

3. A Law may be unjust with regard to the Formal Cause, as for instance, if it assign rewards and punishments in a manner not equitable. Here is a defect of *Distributive Justice*, for the object of such justice is an equitable distribution of good and evil. Such a Law, though unjust, does oblige; for the same reason as before, that the subject is not the judge of such distribution.

4. A Law may be unjust with regard to the Material Cause; as when it commands what is wrong or vicious. Hence there is a defect of *Universal Justice*, which requires right and virtuous proceedings. Such a Law not only does not oblige the subject to obey, but obliges him to disobey.

15. *Fifth Question.* What kind of Justice, and how much, is required, in order that the Law may be called just, and may be deemed obligatory?

We reply. *First*, It is not necessary that the thing commanded by the Law be positively just, so as to be an act of virtue; it is suf-

2 *secundo,* dato quod *lex* aliqua sit *injusta* ex parte causæ vel *efficientis,* vel *finalis,* vel *formalis,* aliquo eorum quo jam novissime dictum est modorum: si tamen nullus sit *justitiæ* defectus ex parte *causæ Materialis,* id est, si actus ex vi et imperio Legis a subdito exercendus talis sit, ut possit ab eo præstari sine aliquo suo peccato; sufficere istiusmodi *justitiam* ad inducendam *obligationem.*

XVI. Ceterum ne *subditus,* quo se licentius vinculo *Legis* subduceret, *inobedientiæ* suæ scrupulum aliquem prætexeret, (quo paralogismo mirum quantum se facile patiuntur decipi plurima hominum turba:) videri sibi nimirum *Legem iniquam,* et cui bona cum conscientia obediri non possit, ac proinde nec debeat: (Hoc enim esset, inquiunt, *dubitante conscientia* obedire: quod autem fit *dubitante conscientia* sine peccato fieri nequit, docente Apostolo, *Rom.* xiv. 23, omne *quod non ex fide est peccatum esse:*) necesse est ut ulterius quæratur: et

Sexto, Quæ certitudo quod *lex* aliqua sit *injusta,* requiratur ad hoc, ut *subditus* possit esse securus in conscientia, se
1 ea lege *non teneri.* Pro responsione dico *Primo,* si lex sit manifeste et *notorie injusta,* certum esse posse subditum, se ea lege non obligari. Quod idem dicendum est, si vel *morali certitudine,* (post adhibitam in veritate disquirenda debitam

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ficient if it be negatively just, that is, not unjust and vicious. For matters indifferent are the peculiar and proper field for Laws.

Secondly, If the Law be unjust on the part of the Efficient, Final, or Formal Cause, but not on the part of the Material Cause; that is, if the act commanded be one which may be performed without sin, this kind of Justice suffices to induce an obligation; [as already explained in the last section.]

16. *Sixth Question.* What amount of certainty that a Law is unjust is required, that the subject may with a safe conscience deem himself not bound by it.

(This question must be examined, because men often profess scruples of conscience as a ground for disobedience. They say that the law is unjust; that they could not obey it without having a doubtful conscience; and that this would be sinful: Rom. xiv. 23.)

We reply, *First:* If the Law be manifestly and notoriously unjust, the subject is not bound to obey; and the same is true, if having examined the matter with due diligence, he is morally certain of the injustice of the Law.

Secondly, If through some obstinate errour of judgment, he thinks the Law to be unjust when it is not so, still the obligation of the Law

diligentiam,) judicet eam esse simpliciter *injustam*. Dico
secundo, si ex errore aliquo judicii obfirmato, et quem non sit 2
facile deponere, existimet legem esse *injustam*, cum non sit; obligationem tamen legis manere, errore illo mentis non obstante, ita ut peccati non sit immunis, si non obediat: gravius tamen peccaturum, si errore illo nondum deposito obediret. De quo *Casu*, cum ad collationem utriusque obligationis deventum erit, (si Deo permittente eo perveniatur,) opportunior
erit disputandi locus. Dico *tertio*, si ex levi aliquo injecto 3
scrupulo aut *objectiuncula* suspicetur tantum legem forte esse *injustam;* contemnendum esse ejusmodi *scrupulum*, et omnino *Legi* parendum: a qua parendi necessitate frustra fuerit, quisquis se *teneræ conscientiæ* obtentu satis excusatum iri existimaverit.

XVII. Dico *quarto*, (quod utinam satis attenderent, qui- 4
bus crassam suam inobedientiam *teneræ conscientiæ* prætextu tueri mos est,) si, ob apparentes utrinque *rationes probabiles*, nesciat subditus nec facile apud se statuere possit, justane sit lex an secus, ita ut mens quasi *in æquilibrio* pendula hæreat, *incerta* utro se potius inclinare debeat; *obligari* in eo casu subditum ad actualiter *obediendum*, ita ut peccet, si non obe-
diat; si obediat, non peccet. *Ratio prima*, Quia ex regula 1
juris [d] *In dubiis potior est conditio possidentis.* Ergo ubi de jure lis est inter *Legislatorem* et *civem;* nisi occurrat ratio aliqua idonea in contrarium, semper præsumendum est *pro Legislatore*, ut qui est *in possessione juris*, contra civem: ut autem sit aliqua satis idonea ratio in contrarium, fieri non

[d] [conf. supra Præl. v. Sect. 15.]

remains, notwithstanding the errour. He is not free from blame if he disobeys, though he would be still more to blame, if, whilst his errour still subsists, he were to obey. This is a case of conflict of the obligations of Law and of Conscience hereafter to be further discussed.

Thirdly, If, from some small scruple, he only suspects the Law to be unjust, he ought to reject the scruple and obey the Law. The pretext of a tender conscience does not excuse him.

17. *Fourthly*, If the probable reasons be nearly equal for and against the justice of the Law, so that the subject's mind is balanced between them, he is bound to obey. (This also is to be noted by those who make a tender conscience their pretext for gross disobedience.)

1st Reason: From the Rule of Law, that *Possession is to be respect-*

potest in casu proposito, quia esset *contra hypothesin;* supponimus enim, alias *æquo* inter eos *jure* contendi. *Ratio*
2 *secunda,* ex alia itidem juris regula, *Quia in re dubia tutior pars est eligenda.* Et omnino tutius est dubitante conscientia *obedire,* quam dubitante conscientia *non obedire:* quia tutius est in honore superioribus exhibendo *excedere* quem
3 debeas modum, quam ab eo *deficere.* *Ratio tertia,* ex eadem etiam regula, quia generaliter tutius est, ut quis se *obligatum* judicet qui *liber* est, quam ut *liberum* se credat, cum sit revera *obligatus.* Cum enim ex innata cordis humani pravitate, a *nimia audacia* sæpius quam a *nimio metu* peccetur; atque ad *carnis licentiam* procliviores quam par est, et ad *ferendum jugum* minus patientes simus omnes: ni firmo animi proposito nobis ante steterit, legibus quæ non sunt evidenter *injustæ* parendum esse, suggeret nobis subinde *prudentia carnis,* accedente etiam serpentis astu, eas *excusationes,* quæ nos ab officio hac in parte præstando sæpissime impediant. Et hæc de *dubio quarto.*

XVIII. Sequitur QUINTUM, *de Lege Permissiva mali: An sit licita, et quatenus; et an et quatenus obligatoria.* Ubi imprimis observandum est, Lege *permitti* posse rem malam
1 tripliciter: *privative,* scilicet, *negative,* et *positive.* *Privative permitti,* idem est quod a Legislatore *prætermitti:* sic omnia illa *permittuntur,* de quibus vel prohibendis vel puni-

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ed. The Legislator is in possession of authority; and by supposition there is no decisive argument against him.

2nd Reason: From the Rule that in doubtful matters we must choose the safe side. It is safer to obey than to disobey with a doubtful conscience; for it is safer to err in excess of honour to superiors than in defect.

3rd Reason: From the same Rule; It is safer to believe ourselves obliged when we are really free, than to believe ourselves free when we are really obliged. For we oftener err from overboldness than from fear; from impatience of constraint than from patience. Hence we must make it our habitual maxim, that laws not obviously unjust, are to be obeyed, in order to check such propensities.

18. FIFTH DOUBT. Is a Law, permissive of evil, allowable, and how far? Is it obligatory, and how far?

A Law may permit evil in three ways, *privatively, negatively,* and *positively.*

Privatively, when it is not mentioned: in this sense everything is permitted for which no prohibition or no penalty is provided.

Negatively, when the exercise of a right is defined by certain

endis jura nihil statuunt. *Negative permittitur id,* cujus 2
exercitium jura certis limitibus definiunt, intra quos qui se continuerint extra noxam sunt, qui vero eos excesserint sunt lege puniendi: Sic *usuram* exerceri permittunt plerarumque nationum jura. *Positive id permittitur,* cujus, sub certa tri- 3
buti cujusdam pensione, exercitium *toleratur:* Sic Romæ permittuntur *meretricum prostibula.*

XIX. Hac distinctione præmissa, Dico *Primo, Privative* 1
multa mala in omnibus Rebuspublicis necessario *tolerari:* Impossibile enim est ut ad omnes species *actuum vitiosorum* jura se extendant, aut ut omne peccati genus legibus humanis coerceatur. Habet hoc [e] *Dei lex* peculiare et eximium, ut ea sola omnia facienda *præcipiat,* omnia fugienda *prohibeat.* Sed in istiusmodi *permissione* nullum esse *obligationi* locum: quia oriri necesse est omnem *obligationem* ex aliquo *actu,* non autem ex *actus privatione* sive *non actu.* Dico *secundo,* 2
Permissionem mali negativam posse esse *licitam.* Si enim *malum* aliquod non possit sine gravi incommodo publico penitus tolli; ad *prudentiam politicam* pertinet, ipsius usum ita moderari, et certis finibus circumscribere, ut possit *utilitati publicæ* inservire. Idque Dei ipsius exemplo, qui populo *Israelitico* permisit *uxorum repudia:* eo consilio, uti exponit optimus Legis interpres Christus, ne ex [f] *duritia cordis* humani et effræni maritorum in conjuges asperitate et sævitia graviora

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[e] [conf. supra Prælect. II. Sect. 12.]

[f] Matth. xix. 8.

limits: thus by the laws of most nations, usury within certain limits is permitted.

Positively, when a practice is tolerated on payment of a tax; as at Rome, prostitution is permitted.

19. This distinction being premised, we say,

First, That many evil things must necessarily be tolerated privatively, in every human code of Law. It is the peculiar character of God's law, that it alone forbids *all* that is evil. But such a permission does not induce any obligation; for obligation arises from an act, not from a privative act (silence), which is no act.

Secondly, That a negative permission of evil is allowable; when the evil cannot be quite removed without great public inconvenience, it is a part of political prudence to confine it within certain limits, so that it may have a public utility. Thus God permitted the Jews to put away their wives under certain circumstances, to prevent greater evils arising from the hardness of their hearts.

Thirdly, That such a law does not oblige any one to do what the

3 pullularent incommoda. Dico *tertio,* ejusmodi tamen lege
neminem [g] *obligari* ad faciendum id quod lex *permittit:*
Finis enim *permissionis* est, non ut *id fiat* quod lege per-
mittitur, sed ne *ultra* id quod leges permittunt *fiat.* Pro-
inde, sicut *permissio* ipsa *negativa* tantum est, ita *obliga-
tionem* inducit non nisi *negativam:* hoc est, *obligatur* sub-
ditus, si ipsi libuerit facere quod lex *permittit,* præstitutos sibi
4 a lege fines *non excedere.* Dico *quarto, permissionem mali
positivam,* si plura aut graviora sint *mala* quæ ex ejusmodi
permissione consequuntur, quam sunt ea in quorum reme-
dium adhiberi prætenditur, ut plerumque sit, non esse *lici-
tam:* præsertim si *permissioni* rei turpis accedat, ex impo-
5 sito tributo, *turpis* etiam *lucri* suspicio. Dico *quinto,* nemi-
nem obligari tali lege *ad faciendum* id quod permittitur;
imo aliunde obligari unumquemque, non obstante legis per-
missione, *ad id non faciendum.* Ratio est; Quoad priorem
partem, quia est contra naturam *permissionis,* ut sit *obliga-
toria:* cum permissio det *libertatem,* et omnis *obligatio* sit
vinculum quoddam. Quoad posteriorem partem, quia suppo-
nimus id quod lege humana sic *permittitur* esse ex se *malum;*
et lege Dei obligamur *ad non faciendum malum.* Permissio
itaque mali, quatenus *nuda permissio* est, neminem obligat
ad faciendum; quatenus autem *mali permissio* est, unum-
quemque obligat *ad non faciendum* id quod permittitur.

XX. Atqui dictum est jam ante sæpius, omni *Legi*

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[g] *Aliud est indulgere, aliud jubere.* Tertullian. de Monogam. cap. xiv.

law permits. For the end of the permission is, not that so much may be done, but that no more may be done. The permission is negative, and the obligation is accordingly negative, *not* to exceed the prescribed limits.

Fourthly, That a positive permission of evil is not allowable, if the evils arising from the permission be greater than those which the permission seeks to remedy, as is commonly the case: especially as the permission of a vicious thing on payment of a tax may incur the suspicion of a love of base lucre.

Fifthly, That no one is, by such a law, obliged to do what is permitted: but on the contrary, every one is obliged not to do it, notwithstanding the permission. For a permission is not an obligation; and the thing being evil, we have a contrary obligation arising from the Law of God.

Thus a bare permission does not oblige; a permission of evil obliges us not to do the thing permitted.

adesse vim *obligativam*, quæ eam ita individue comitatur, ut posita *Lege* necesse sit sequi *obligationem*, et *obligatione* sublata, una tolli et *Legem*. Ergo *Legem permissivam*, aut negandum est esse *Legem*, aut fatendum est *obligare*. Huic objectioni ut occurratur, nulla nos cogit necessitas eo confugere, ut *Legem permissivam* negemus esse *Legem*; quam non modo *Legem*, sed et *legem proprie dictam* esse fatemur. Certe Lex illa Mosaica de repudio, cujus, *Matth.* xix., mentio facta est, ut *Permissionis* nomine venit (Μωσῆς ἐπέτρεψεν) illius capitis *versu octavo*, sic ejusdem capitis versu *septimo* mandatum dicitur, sive *præceptio*, (Μωσῆς ἐνετείλατο.) Quid quod ei *Legis et nomen* passim tribuitur, et *definitio illius nominis* æque congruit, ac legi vel præcipienti fieri aliquid vel vetanti: ut omnino concedendum sit *Legem* de his omnibus, ut suis speciebus, per modum generis et *univoce* prædicari. Ergo et illud concedendum erit, civem ejusmodi lege *obligari?* Omnino concedendum reor. Quod ut cum his quæ *de lege permissiva* hactenus dixi, quam non male cohæreat, rectius intelligatur:

XXI. Dico *sexto*, *Legem* omnem hujusmodi *permissivam*, quatenus *lex* est, *obligare* subditum in conscientia ad sui *observationem*. Ratio manifesta: quia [h] *obligatio*, ut sæpe dictum est, est *Legis effectus* necessarius, nec ab ea separabilis. Quod ne pugnare videatur cum his quæ modo dicta sunt: duo ista sunt observanda, quæ propterea signanter sunt a me enunciata. Alterum, quod dixerim *Legem permissivam* obligare 1
ad *sui observationem:* aliud est autem obligari subditum ad *observandam Legem*, quod nunc assero; aliud vero obligari

[h] [vid. supra Prælect. v. Sect. 10.]

20. But how does this agree with what we have said, that every Law has an obligatory force? Either a permissive Law is not a Law, or it must have an obligatory force.

We need not say that a permissive Law is not a Law. In Matth. xix., in verse 8, the expression is, *Moses suffered*, in verse 7, it is, *Moses commanded.* Permissive Laws agree with the definition of Laws, are always called Laws, and are Laws in the same sense as other kinds of Laws. And we say:

21. *Sixthly*, That a Permissive Law does oblige the Conscience of the subject to obedience. But observe: the subject is obliged to obey the Law, not to do the thing permitted: and the Law obliges in so far as it is a *Law*, not in so far as it is *Permissive.* The term *Law* implies the genus, the term *permissive* implies a particular species of

subditum ad *faciendum quod lex permittit*, quod et ante ne-
2 gavi, et jam adhuc nego. Alterum, quod dixerim *Legem permissivam* obligare, quatenus *Lex* est, quod verum est: non dixi obligare quatenus *permissiva* est, quod est falsum. Sciendum est enim *legis permissivæ* vim, quatenus *Lex* est, non consistere in ipsa *permissione*, quæ cum sit legis *differentia divisiva*, necesse est ut sit *lege posterior*, sicut omnis *differentia divisiva* est natura *posterior genere* quod dividit, et ipsum supponit: sed in illa præceptione, quæ est [1]*legis* quasi constitutiva et formalis differentia, et in ipsis *legis verbis*, ut plurimum expresse, aut virtualiter saltem continetur. Hæc enim (*præceptio*, inquam,) illud est, a quo primum oritur subditi *obligatio*, et ad quod ultime terminatur ejus *obedientia*. Exemplo rem ostendo. Legislator ob *mutuandi* necessitatem permittit *usuram*, moderata quadam proportione, inter cives exerceri: proposita etiam pœna his qui *modum fœnoris* lege definitum excesserint. Sitne *usura* simpliciter et de toto genere *illicita*, necne, nihil hic definio, nec ad præsens negotium quicquam interest: hoc interim certum est, utut vel maxime licita esset *usura*, neminem tamen illa *permissione* ad eam exercendam obligari. Sed in istiusmodi lege, præter istam *permissionem*, quæ neminem obligat; duo sunt alia, quæ quum ad *præceptionem Legis* pertineant, habent proinde ex intentione Legislatoris *vim obligandi* omnes cives ad ea observanda. Quorum alterum *formaliter* et disertis verbis præcipitur, nequis scilicet pecuniam ultra modum lege definitum pro *fœnore* exigat: alterum *ex consequenti* et *virtualiter*, nequis ob exercitam, prout ea lege permittitur *usuram* puniatur. *Legis* ergo *permissivæ*, ut verbo dicam, *præceptio* omnes cives obligat, *permissio* neminem.

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[1] [conf. Prælect. VIII. Sect. 10.]

that genus. The command, and the consequent obligation belong to the genus Law. For example. The Law permits usury at a certain moderate rate, with a penalty for those that exceed that rate. Now whether usury be morally wrong or not, it is plain that by such a Law, no one is obliged to practise usury. But moreover, the Law further implies, formally and expressly, that no one should require, for money lent, more than the legal rate; and virtually and by consequence, that no one shall be punished for taking the permitted rate. In a permissive Law, the Law obliges all the citizens, the Permission obliges no one.

XXII. Dubium Sextum, *de rebus mediis et adiaphoris.* Res autem [k]*Mediæ* sive *adiaphoræ* sunt, quarum tota species nulla *divina lege* (*naturali* vel *positiva,*) aut *præcipitur* aut *prohibetur.* Quæ proinde sunt ex se et sua natura, citra circumstantiarum considerationem, et *licitæ* observationis, quatenus non *prohibentur;* et *liberæ* tamen observationis, quatenus *non præcipiuntur.* Fuere qui existimarent, non debere *leges humanas* ferri de *rebus adiaphoris,* sed de his tantum quæ sunt *juris naturalis* aut *divini;* et proinde *Leges civiles* dicerent non tam esse novi juris *constitutivas,* quam antiqui *declarativas,* velut divinæ voluntatis explicationes quasdam et evolutiones. Sed quid opus est refutare opinionem, tam ab omni sana ratione alienam, ut potius ex adverso recte judicari debeant [l]*rés istæ adiaphoræ legum humanarum* propriissima et maxime idonea *Materia?* Quandoquidem ad eorum, quæ *Deus mandavit,* observationem obligamur, vel *tacentibus,* imo etiam vel *contradicentibus,* quorumcunque hominum imperiis: ad ea vero quæ *a Deo vetita sunt,* non facienda obligamur, vel *tacentibus* vel etiam *jubentibus* hominum legibus. Restant ergo sola *adiaphora,* velut campus in quo se exerceat, exseratque vim illam suam inducendi *obligationem* ubi nulla præfuit *potestas humana.* Plane ut constet, posse magistratum civilem in *rebus adiaphoris,* et ante

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[k] [conf. supra Prælect. 1. Sect. 22.]

[l] [supra Sect. 15.]

22. Sixth Doubt. Of Things Indifferent. There are things which are neither commanded nor forbidden; and these are, in themselves, open, in as far as they are not commanded, and allowable, in as far as they are not forbidden.

Some have held that there should not be Laws about things indifferent, but only about things either of a natural or a divine obligation; —that laws should not create obligations, but declare them only.

But this is so far from being true, that Things Indifferent are the especial and proper matter of Human Laws. For what is commanded by God, we are bound to do; What is forbidden by God, we are bound not to do; without the existence of Human Laws. Hence the peculiar field in which Human Laws can exert their power of obliging, is Things Indifferent, when there was no pre-existing obligation.

As in the conduct of private life, matters indifferent, (as food, amusement, giving and receiving, and the like) are by the moral prudence of a good man, regulated by a law of Moderation, and thus elevated into acts of Virtue,—of Temperance and Liberality, for in-

omnem ipsius actum *liberis ad utrumlibet* statuere aliquid in utramlibet partem (*determinando* illam ἀδιαφορίαν) quod *obliget conscientias* subditorum ad obediendum. Sicut enim in cibo, potu et voluptatibus, in dando item et accipiendo, *prudentia Ethica* personæ privatæ, præstituendo, sibi quandam *Mediocritatem,* sic evehit *actus* illos naturales et *indifferentes* ultra statum suum et nativam conditionem, ut exinde incipiant esse *actus virtutum, Temperantiæ* scilicet et *Liberalitatis:* Sic personæ publica auctoritate præditæ *prudentia politica,* præstituendo subditis suis certos circa *res medias et liberas* mediocritatis fines, sic evehit *actus* illos quos legibus præcipit ultra pristini sui status gradum, ut incipiant esse deinceps *actus virtutum, Obedientiæ* scilicet, et *Justitiæ Legalis.*

XXIII. Res aperta nec habitura adversarium, si non nostri seculi, imo et gentis, *Reformatores* quosdam rinxisset tam manifesta veritas: qui quo sibi ad illam, ad quam anhelabant, *ψευδώνυμον reformationem* viam struerent; maluerunt contra communem hominum sensum ἀδιαφορίαν omnem e rebus penitus sublatum ire, quam ullam magistratui de *ritibus* statuendi potestatem concedere. Prors usut [m] Macedo ille, qui *Gordium* difficilem *nodum,* quem nulla arte *dissolvere* potuit, gladio *dissecuit.* Veterum *Stoicorum* in hoc, ut et in aliis non paucis, genuini *discipuli;* qui sapienti nihil docuerunt esse *indifferens,* cum omnia, etiam minutula quæque, usque *ad digiti exsertionem,* recta ratione agat. Illi tamen ἀδιαφορίαν e rebus ita sustulerunt verbis, ut eam

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[m] [Vid. Justin. Hist. Lib. I. cap. vii: Quint. Curt. Lib. III. cap. i.]

stance: so in the conduct of public life, matters indifferent are, by the exercise of the Political Prudence of a wise Magistrate, elevated into acts of Virtue,—of Obedience and Legal Justice.

[It will be observed that Sanderson here adopts the Aristotelian formula, which makes Moderation the condition of Virtue.

Of the manner in which Things Indifferent may be elevated into occasions of virtue, see *Elem. Moral.* Art. 332, &c.]

23. The opposite doctrine, that there are no Things Indifferent, was held by the Stoics in ancient times, who maintained that every act, even to the lifting of a finger, is to be governed by right reason. But they were, nevertheless, compelled to allow that there might be a difference of things *preferred* and *postponed.* The same doctrine has been held in modern times by some vehement Reformers: especially one Theologian and one Layman, both lately dead; but need not here be refuted further.

re ipsa, adversariorum rationibus adacti, tandem concederent; distinctiunculas quasdam commenti [n] προηγμένων et ἀποπροηγμένων, etc. quibus *errorem* suum, ne viderentur *errasse*, honestius occultarent. At reperti e nostris, qui hoc tam putidum, et extritum jam diu e scholis dogma γυμνῇ τῇ κεφαλῇ publicatis scriptis, idque rigidius multo quam olim *Stoici*, tueri ausi sunt: duo præsertim; alter, alicujus nominis apud suarum partium homines, *Theologus*; alter, e Proceribus regni, *Laicus*: uterque ante aliquot annos mortuus. Quibuscum cum interiisse simul putem illud suum *dogma*, nec facile apud viros cordatos *fidem*, nedum *patronum* reperturum: non existimo operæ fore pretium, ei refutando immorari.

XXIV. Esse igitur et *res* et *actiones indifferentes*, ex natura sua saltem et *in specie* (quod ne Στωϊκώτατον quenquam negaturum opinor) accipio pro confesso. De quibus, quod ad nostrum institutum attinet, illud proxime advertendum est; actum *sua natura*, (i. e. respectu *materiæ* sive *objecti*,) *indifferentem*; si lege *præcipiatur*, e bono et *licito* fieri honestum et *necessarium*: si lege *prohibeatur*, e bono et *licito*, malum fieri et *illicitum*. Quod non contingit ex aliqua *im-*

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[n] [Vid. Diogen. Laert. Lib. VII. Segm. 10. p. 104. sq.; Stobæi Eclog. Ethic. Lib. II. cap. vi. s. 6, Tom. II. p. 570. ed. Gaisford.: ἔτι δὲ τῶν ἀδιαφόρων τὰ μὲν πλείω ἀξίαν ἔχειν, τὰ δ' ἐλάττω· καὶ τὰ μὲν προηγμένα, τὰ δὲ ἀποπροηγμένα, τὰ δὲ οὐδετέρως ἔχοντα. Προηγμένα μὲν, ὅσα ἀδιάφορα ὄντα πολλὴν ἔχει ἀξίαν, ὡς ἐν ἀδιαφόροις· ἀποπροηγμένα δὲ ὅσα πολλὴν ἔχει ἀπαξίαν ὁμοίως, κ.τ.λ. ib. 575. προηγμένον δ' εἶναι λέγουσιν, ὃ ἀδιάφορον ὂν ἐκλεγόμεθα κατὰ προηγούμενον λόγον...οὐδὲν δὲ τῶν ἀγάθων εἶναι προηγμένον διὰ τὸ τὴν μεγίστην ἀξίαν αὐτὰ ἔχειν· τὸ δὲ προηγμένον τὴν δευτέραν χώραν καὶ ἀξίαν ἔχον συνεγγίζειν πως τῇ τῶν ἀγαθῶν φύσει ...προηγμένα δὲ λέγεσθαι οὐ τῷ πρὸς εὐδαιμονίαν τίνα συμβάλλεσθαι συνεργεῖν τι πρὸς αὐτὴν, ἀλλὰ τῷ ἀναγκαῖον εἶναι τούτων τὴν ἐκλογὴν ποιεῖσθαι παρὰ τὰ ἀποπροηγμένα: conf. Ciceron. de Finn. III. 6; Aul. Gellium, Noct. Att. XII. 5, 7; Sext. Empiric. Ὑποτυπ. III. 24.]

24. An act or thing indifferent by its nature (that is its matter or object), if it be commanded by Law, from being allowable, becomes necessary to right action; if it be forbidden by Law, from being open, becomes wrong.

This does not happen from any change in the thing itself, either physical or ethical; but from the Obligation which the law superinduces. Thus it comes to pass that what was, as by nature and of itself, so in practice and with regard to us, open either way; when the authority of the law supervenes, becomes in practice and with regard to us, no longer open, but according to the law, either wrong, or necessary to right action.

mutatione circa *rem* ipsam facta, quæ seu jussa seu vetita, ut *physice*, ita et *ethice*, eadem permanet quæ ante fuit, (*respectus* enim *non mutat naturam*:) sed ex *obligatione* illa obvenit, quam *lex* inducit. Unde factum, ut quod ante fuit, sicut *natura* et *ex se*, sic *usu* etiam et *quoad nos*, *liberum ad utrumlibet*; Legis accedente auctoritate evadat *usu* et *quoad nos* non liberum amplius, sed pro legis exigentia vel *illicitum*, vel *necessarium*.

XXV. Si quæratur, cum videatur *Lex* parem habere vim in utramque partem, qui fiat, ut possit *Lex vetando* actum facere ex bono et *licito* malum et *illicitum*, non item possit *Lex* (id enim [o] ante negavimus) *jubendo* actum reddere ex malo et *illicito* bonum et *licitum?* Respondeo, rationem discriminis esse manifestissimam ex notissimo illo axiomate, [p] *Bonum ex causa integra, Malum ex quolibet defectu.* Actus ergo de sua *specie* et respectu *objecti malus*, necesse est ut semper sit *malus*, nec potest in aliquo sui exercitio, quibuscunque accedentibus circumstantiis fieri *bonus*: propter defectum bonitatis *ex parte objecti*, qui defectus sufficit ad totum actum vitiandum. At actus de *sua specie bonus*, aut saltem non malus, si vel una aliqua accesserit *circumstantia* minus recta, totus redditur *vitiosus*: propter defectum scilicet debitæ *rectitudinis* in illa *circumstantia*. Unde consequitur aliud etiam discrimen inter legem humanam *affirmativam* et *negativam*, sive præcipientem et vetantem: quod *lex affirmativa* non dat actui quem præcipit *bonitatem*, si sit alias aliqua ex parte *malus*; Sed *lex negativa* dat actui

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o [supra Præl. II. Sect. 9.]

p [Vid. Dionys. de divinis Nominibus, cap. iv. τὸ ἀγαθὸν ἐκ τῆς ὅλης αἰτιᾶς: et conf. Thom. 1. 2, Quæst. 17, Art. 4, ad 3, et Quæst. 19, Art. 6 ad 1: et Præl. locum proxime laudatum.]

25. It may be asked, Since Law can make an act which was good and allowable to be bad and wrong; why cannot Law make an act which was bad and wrong to be good and allowable?

We reply, that the reason is to be found in the known Axiom, that Good comes of the Entire Cause; bad, of any Defect. Hence an act which by its kind and object is bad, must always be bad, for no circumstances can remedy the defect of goodness of the object: but an act which is by its kind good, or at least, not bad, if any one wrong circumstance be added, is vitiated altogether.

Hence we see a difference of Laws affirmative and negative, commanding and forbidding;—that an affirmative Law does not give goodness to the act which it commands, but a negative Law does give bad-

quem prohibet, etsi sit alias ex omni parte *bonus*, *malitiam*. *Præceptum* ergo humanum *affirmativum*, quod invenit bonum, facit esse *necessarium; negativum*, quod invenit bonum, facit esse *illicitum:* utrumque quod invenit *malum*, malum etiam sicut invenit, relinquit. Utrumque tamen *obligat*, suo scilicet modo, et *quoad nos:* illud *ad faciendum*, quod præcipiendo jam factum est *necessarium; hoc ad non faciendum*, quod vetando jam factum est *illicitum*.

XXVI. Restat Dubium septimum, de *Legibus Ecclesiasticis* in speciali, *Leges* autem *Ecclesiasticas* hic intelligo, non quæ *a personis Ecclesiasticis* sine magistratus civilis auctoritate constitutæ sunt, (quæ schola non est hujus loci, sed ad alterius generis *causam*, *Efficientem* scilicet, pertinet:) sed quæ a quacunque demum legitima potestate latæ circa *res Ecclesiasticas* versantur: de *materiali* enim *causa* solum ad præsens disputamus. Non mihi adhuc videre contigit, præter duos illos antedictos, qui *ἀδιαφορίαν* omnem negaret, aut qui *Magistratui politico* aliquam in rebus *adiaphoris* mere *politicis* potestatem non concederet. At qui hominibus potestatem omnem adimant, *ritus* et *ceremonias* in publico Dei cultu instituendi, extra eas quæ sunt a Christo et ejus Apostolis in Evangelio perscriptæ, occurrit ubique magna *Novatorum* seges. Verum enimvero, (ut quod res est profitear,) dum, ut mihimetipsi aliisque hoc in negotio satisfaciam, multa a multis (nostratibus præsertim) in eam sententiam con-

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ness to the act which it forbids. Or otherwise: an affirmative human command, what it finds good, makes necessary to right action; a negative one, what it finds good, makes wrong: each, what it finds bad, leaves bad.

But each is obligatory in its own way, and with regard to us: we are obliged to do what, being commanded, is necessary; not to do what, being forbidden, is wrong.

26. Seventh Doubt. Of Laws Ecclesiastical: that is, Laws concerning Matters Ecclesiastical, for in this Lecture we speak of the *matter* of Laws.

There are few who deny that the Magistrate may legislate in things indifferent of a political nature; but very many of the modern Reformers deny that the Magistrate may legislate at all in things of an ecclesiastical nature.

The arguments for this opinion which peculiarly apply to the ecclesiastical character of things (setting aside those arguments which are equally valid against political legislation) are these four: Christ the Lawgiver; the Perfection of Scripture; the Nature of Divine Worship; the Example of the Ancient Church.

gesta volumina excutio; nusquam reperi, qui justam aut justæ similem *discriminis rationem* in medium afferret, cur determinandi et statuendi circa *res adiaphoras potestas*, non in *Ecclesiasticis* æque obtineat, atque in *Politicis*. Quæ enim *a Scandalo, a Libertate Christiana*, et aliis ejusmodi *Locis communibus*, opponi solent argumenta, adversus *utriusque generis* leges et constitutiones æquo Marte militant; et aut utrasque pariter evertunt, aut neutras. Quæ peculiarem aliquam vim adversus *Leges et ritus Ecclesiasticos* habere existimantur, *quatuor* omnino sunt, singula (pro temporis ratione) breviter et suo ordine examinanda: *Christus Legislator, Perfectio Scripturæ, Natura sacri cultus, et veteris Ecclesiæ Exemplum.*

XXVII. Objiciunt *primo* illud Apostoli, *Jacob.* iv. 12, *Unus est Legislator, qui potest servare et perdere.* Hoc novatorum argumentum, ut totius causæ suæ basin, regnante *Elizabetha*, plurimi fecere qui tunc erant *Disciplinariæ factionis* Coryphæi; *Christum* nimirum unicum esse *Ecclesiæ* suæ, ut *principem*, ita et *Legislatorem;* quas ille dedit *Leges*, Ecclesiam teneri in perpetuum *observare;* alias vero non admittere debere, nec alium *Legislatorem* agnoscere. Quicunque *Leges Ecclesiæ* ferre, præter eas quæ sunt a Christo latæ, præsumpserit, *Antichristi* partes agere, et se prodere *regii Christi muneris* temerarium invasorem. Hunc *Apostoli* locum aliquoties [q]ante, ut res postulabat, tractavimus: præsertim ubi probandum fuit *Deum* solum et ejus *Christum* in *conscientias* hominum merum et *directum imperium* habere. Sed obtinere hoc in *legibus politicis* nihilo minus quam in *Ecclesiasticis*, cæcus sit oportet qui non videat. Cur enim obligatio *legum humanarum* in rebus *civilibus*, cum *Legislativa* unius Christi *potestate* consistere possit, non poterit

[q] [Vid. supra Præl. IV. Sect. 8; Præl. V. Sect. 36.]

27. (1) *Christ the Lawgiver*, James iv. 12. This argument was much urged by the Puritans in Queen Elizabeth's time. All besides Christ who made laws for the Church were held as Antichrist.

But this argument is equally valid against political and against ecclesiastical laws. If Christ be the Lawgiver of the Church, so is he of the State. The Apostle is not there speaking of the Church, nor even of political rights, but of the censures of private persons. He warns his hearers that there is only one Lawgiver who can judge the Conscience. This has nothing to do with Laws, either political or ecclesiastical.

consistere eadem in *Ecclesiasticis;* quis ullam *discriminis* vel tenuissimam umbram ex illo textu eliciat tandem? Esto *Ecclesiæ Christianæ* legislator Christus: Annon et *Reipublicæ Christianæ* pariter? Neque enim meminit Apostolus in toto illo commate *Ecclesiæ;* nec de *rebus Ecclesiasticis* omnino disputationem illam instituit: quin imo nec de *politicis* aut *legibus* aut *juribus* ibi agitur, sed de *privatorum hominum censuris.* Voluit ille fideles admonitos, ut *Christianæ caritatis* memores, a fratribus temere judicandis abstinerent: Deum enim unicum esse *Conscientiarum judicem,* qui solus *Legem* dedit, ex qua in die ultimo *judicandi* essent singuli. Hic verus illius loci scopus; hæc Apostoli mens. Quid hoc, quæso, ad *Leges humanas* damnandas; aut si damnandas, cur *Ecclesiasticas* magis, quam *Politicas?* Quarum neutræ, saltem non unæ magis quam alteræ, a nobis asseruntur *per se et virtute sua* obligare Conscientias.

XXVIII. Objiciunt *secundo, Perfectionem Sacræ Scripturæ;* regulam hanc esse vitæ et morum; *Legem perfectam,* et quæ *sapientem* reddere possit *hominem Dei ad omne opus bonum;* cui quisquis de suo quicquam *addiderit,* insignem Deo injuriam fecerit, et sibi gravissimas accersiverit pœnas. Certissima omnia. Quod si Scriptura sit regula vitæ et agendorum omnibus numeris absoluta; idque (si novis his *Stoicis* fides) usque ad res quasque leviculas, ut nec [r]*festucam tollere* liceat nisi ex verbi Dei præscripto: an non tam *rebus civilibus* regulandis sufficiet, quam *Ecclesiasticis;* aut qui magis derogabunt perfectioni Scripturæ *Ecclesiæ* Leges, quam *Reipublicæ?* Aut quis eum recte dixerit *addidisse* verbo Dei aliquid, qui *leges Ecclesiasticas* condidit *ordinis et honestatis* causa: quum nec ille *Leges* suas populo proponat ut *Dei verbum;* et Deus in verbo suo præceperit, ut omnia in Ecclesia *ordine* et *honeste* fiant?

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[r] [Καθάπαξ ἀδιάφορα, οἷον τὸ προτεῖναι τὸν δάκτυλον ὡδὶ ἢ ὡδὶ, ἢ τὸ ἀνελέσθαι τι τῶν ἐμπόδων κάρφος ἢ φύλλον. Stobæus ubi supra Sect. 23.]

28. (2) *The Perfection of Scripture:* The word of God alone can render us wise to every good work; and none can add to it without sin.

This is very true: but is as much against civil as ecclesiastical Laws. We do not add anything to the word of God when we make ecclesiastical laws for the sake of order and decency, not proposing them as the word of God; but following the precept that all things are to be done decently and in order in the Church.

XXIX. Objiciunt *tertio, Naturam Cultus:* nempe *Cul-
tum Dei* esse rem sacram: in eo *cultu* omnia ex *Dei præ-
scripto* esse peragenda: procul illinc abigendas, ut *supersti-
tiosas,* imo plane *idololatricas,* quascunque *humanas adinven-
tiones,* et ritus ἀγράφους. Est profecto res sacra *cultus Dei:*
nec fas est homini *cultum* aliquem instituere, præter eum
quem ipse Deus præstituit. Sed quia latet in voce ambigui-
tas, distinguendum est de *Cultu Dei:* tripliciter enim acci-
1 pitur ea vox. *Imprimis, Cultus Dei* proprie dictus et præ-
cipuus, est internus ille *animi cultus,* qui consistit in exercitio
virtutum internarum, *Fidei, Spei, Dilectionis, Invocationis,*
2 *Fiduciæ, etc. Secundo, Actus* illi *externi,* quibus internus
ille animi *cultus,* partim exprimitur, partim adjuvatur et fove-
tur; cujusmodi sunt *Precationes publicæ, Gratiarum actiones,*
Psalmodiæ, Auditio verbi, participatio Sacramentorum, etc.,
suo quodam modo, id est, reductive et minus proprie, dici etiam
possunt et solent *Cultus Dei:* in quantum sunt illius proprie
3 dicti cultus externa sive *testimonia,* sive *adminicula. Tertio,*
cum sit impossibile *actionem* aliquam *externam,* præsertim si
sit solennis, sine *circumstantiis* quibusdam, (pluribus aut pau-
cioribus,) *locorum, temporum, gestuum, etc.* præstari; inde
fit ut ipsæ illæ *circumstantiæ* (quæ, si aut *legibus* aut *moribus*
stabilitæ fuerint, *Ritus* etiam dicuntur,) interdum *Cultus* ap-
pellationem accipiant: sed id improprie admodum, et propter
eam concomitantiam solum quam habent ad *cultum* illum *ex-*

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29. (3) *The Nature of Worship.* The Worship of God is a sacred thing, not to be profaned by human inventions.

Answer. We must distinguish different senses of the word *Worship.*

(1) The Internal Worship of the heart, Faith, Hope, Love, Prayer, Truth, &c.

(2) External Worship; the acts by which internal worship is expressed and fostered; as Public Prayers and Thanksgivings, Psalmody, the Hearing of the Word, the Participation of the Sacraments: this may be called the Worship of God, in as far as it is a testimony or a help of the other.

(3) The Circumstances of such external acts, as to place, time, posture, &c., which when established are called *Rites and Ceremonies,* are sometimes called *Worship,* (though very improperly,) on account of their connexion with External Worship.

Now Internal Worship has God for its author, and cannot be altered or regulated by man. External Worship also, as to substantials, is appointed by God alone. But with the Circumstances of

ternum, qui et ipse improprie quoque *cultus* dicitur. Dicendum ergo, *internum* illum primarium et proprie dictum *cultum,* ita Deum solum auctorem agnoscere, ut nulli homini fas sit, aut *novum cultum* instituere, aut a Deo institutum alicui alteri præterquam ipsi Deo exhibere. *Externum* quoque *cultum,* quoad *substantialia,* a Deo solo institui. Ast *circumstantiarum,* quæ sunt huic *externo cultui* accessoriæ, et ipsum comitantur, (si quis eas quoque voluerit *cultus* nomine dignari,) longe aliam esse rationem. Quum enim non possit *externus* Dei *cultus sine circumstantiis* præstari, nec tamen Deus in Evangelio suo certas particulares *circumstantias* in sacris conventibus perpetuo observandas tradiderit, sed generatim duntaxat præceperit, ut *ordini, honestati,* et *ædificationi* serviatur: necessario sequitur ejusmodi *circumstantiarum* determinationem, quæ sunt ipsi *cultui accidentales,* et pro locorum, temporum et occasionum ratione *mutabiles,* ad eos qui sub Christo regendarum Ecclesiarum jus et potestatem habent pertinere. Quas, et ab iis qui publica auctoritate in singulis Ecclesiis præditi sunt *præstitui,* et præstitutas ab omnibus earundem Ecclesiarum membris religiose *observari,* sacri cultus non natura prohibet, sed exigit potius solennitas et decor. Quid quod isti ipsi homines, qui in *Canones* et *Constitutiones Ecclesiasticas* tam severe et plenis buccis invehuntur, *ritibus* tamen in cultu Dei externo, a Christo aut ejus Apostolis nusquam præscriptis, quoties ipsis collibitum est, utuntur: ut *manus levatione* in juramento præstando, *capitis denudatione* in sacra synaxi, aliisque compluribus, quæ cum quotidie fieri videamus, non opus est recensere.

XXX. *Objiciunt quarto,* Veteris, hoc est *Judaicæ,* Ecclesiæ *exemplum Mosen,* datum a Deo Hebræo populo Le-

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External Worship the case is very different. There can be no external acts without circumstances: the circumstances are not prescribed in the Gospels, but only generally, that everything be done so as to promote order, decency, and edification; hence the circumstances, which are of themselves mutable, are to be commanded by those who have authority in the Church; and when commanded, are to be obeyed by the members of the Church.

Even those who inveigh most loudly against Canons and Constitutions Ecclesiastical, use, when they please, Rites not commanded by Christ or his Apostles; as the lifting their hand in swearing an oath, and baring their head in the congregation.

30. (4) *The Example of the Ancient Church;* that is, the Jewish

gislatorem, non *substantialia* tantum cultus Judaici, sed, qua erat fidelitate, et minutissimas quasque *circumstantias* lege sua definivisse; et in construendo *tabernaculo,* qui futurus erat *Ecclesiæ Christianæ* typus, ad *exemplaris sibi in monte propositi* ideam omnia ad amussim perfecisse. Christum utique *Novi Testamenti Legislatorem,* nisi omnia et singula quæ in *cultu Ecclesiastico* peragenda sunt, usque ad minutissimas quasque *circumstantias* præscripsisset, merito credi posse (quod vel suspicari proxime a blasphemia abest,) *minus fidelem* in domo Dei fuisse quam fuerat *Moses.* Christo proinde insignem fieri injuriam pariter, et contumeliam; siqui *novi ritus,* quos ipse nusquam instituit, *auctoritate humana* in Ecclesiam inferantur, aut a *plebe Christiana* recipiantur. Atqui imprimis cogitari debuerant qui ista objiciunt, hoc argumento non minus *Leges humanas politicas* everti quam *Ecclesiasticas. Moses* enim ex Dei mandato *Hebræo* populo legem dedit certam et definitam, non eorum *rituum* solum quæ ad *cultum Dei,* sed et eorum *judiciorum* quæ ad *civilis regiminis* administrationem pertinebant.

XXXI. Deinde et illud *secundo* mirum est eos non animadvertisse, collatione ejus *fidelitatis* quæ fuit in utroque *Legislatore, Mose* et *Christo,* vix aliquid ab eis adduci potuisse importunius, quod causæ suæ majori esset nocumento, et quod sententiam nostram validius confirmaret. Sicut enim ex eo quod *Moses,* et in *ritualibus* et in *judicialibus,* populo Judaico

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Church: for which Moses prescribed the most minute circumstances, as well as the substantial parts, of worship. The tabernacle, the type of the future Church, was made in all things according to the pattern in the mount. Christ must therefore have provided all things necessary for his Church, otherwise he would have been a less faithful minister of God than Moses; and it is an insult to him to add anything to what he has appointed.

Answer 1. This applies to political laws, as well as ecclesiastical. Moses established laws for civil government, as well as rites for divine worship.

31. *Answer* 2. The faithfulness of Christ and of Moses is shewn in a very different manner. Moses left precise rules, both judicial and ritual, for the Jews; whence we learn that the law was to rule them like a schoolmaster, few things being left undetermined and free. But since Christ has determined very few Ceremonies, we collect that Christians in such matters are left to their Christian liberty, both private persons and magistrates.

Leges plurimas tulerit; recte colligimus voluisse Deum populum *Judaicum,* sub illa pædagogia et disciplina *Mosaica,* quasi quodam servitutis jugo, sic in officio contineri, ut paucissima essent illis *libera:* Ita ex eo quod *Christus,* paternæ voluntatis fidelissimus interpres, Ecclesiæ Christianæ *paucissimas leges* tulerit *Ceremoniarum,* recte colligimus Deum voluisse, ut Magistratus et *populus Christianus* in istiusmodi rebus *libertati* suæ permitteretur. Ita ut jam liberum sit et *privato cuique homini* sponte sua (nullo interveniente *superioris potestatis* imperio vel interdicto,) quod sibi consultius visum fuerit facere: et *singulis Ecclesiis* earumque gubernatoribus ea præscribere et sancire, quæ sibi pro temporum et locorum conditione, *ordini, honestati, ædificationi et paci* maxime inservitura videbuntur.

XXXII. Quin et illud *tertio* cogitasse debuerant, qui hoc argumento utuntur, Ne ipsis quidem *Judæis,* sub illa *Mosis* pædagogia, ita omnem ademptam fuisse *rituum libertatem* in rebus ad *Dei cultum* pertinentibus, ut non illis liceret propria auctoritate et *observare* et *instituere,* quæ nullibi constat fuisse vel ab ipso Deo, vel a Mose Dei ministro præcepta. Accipite
instantias e multis paucas. *Primo, Paschatis* Solennitatem 1
ex lege Mosis *septiduo* observandam, Speciali lege *Rex Hezekias* (qui tamen singulare pietatis suæ testimonium a Deo ipso accipere meruit) ex populi consensu in alterum *septiduum* continuari decrevit. Cujus rei historia exstat, 2 *Paralip.* xxx.
Secundo, festum *Purim* in memoriam ejus liberationis, quæ 2
Judæorum genti sub Persarum Rege *Assuero* contigerat, annuatim celebrari instituerunt *Ester et Mardocheus, Est.* ix.
Tertio, cum Moses diem *solennis jejunii* annuatim unicum 3
duntaxat, *Septimo mense,* observandum præcepisset; Reges et

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32. *Answer* 3. Even the Jews were allowed to alter their Rites from time to time. Thus 2 *Chron.* xxx., King Hezekiah made the Passover to be fourteen days, instead of seven.

Esther ix., The feast of Purim was established in memory of the deliverance of the Jews from great danger.

Zachar. viii. 19, Moses appointed only one day of annual fasting, but at the time of the later prophets four days were observed.

1 *Macc.* iv. 59, The feast of Dedication, established by the Maccabees, was honoured by the presence of Christ, Joh. x. 22.

Matth. xi. 21, Sackcloth and ashes are not enjoined in the Old Testament, but were practised by the Jews.

Joh. xiii., We learn from the Rabbis that just before the celebra-

Magistratus illius populi (quibus de causis non satis constat,
sed ut par est credere, in memoriam insignium aliquot judicio-
rum Dei) *annua solennia jejunia* auctoritate sua instituerunt
alia: ita ut temporibus ultimorum Prophetarum *quatuor* ob-
servarentur *annua jejunia:* videlicet, præter illum *Septimi*
mensis, tria alia; mensibus *quarto, quinto, et decimo;* quorum
4 omnium fit mentio, *Zachar.* viii. 19. *Quarto*, festum *dedi-*
cationis Altaris, quod *Encœnia* dicitur, ab *Asamoneis* sine
aliquo Dei mandato institutum, (cujus historia ex 1 *Macc.* iv.
v. 59. petenda est,) Christus ipse non tantum comprobasse, sed
et præsentia sua cohonestasse, plurimorum eorumque melioris
5 notæ interpretum judicio, existimatur, *Joh.* x. 22. *Quinto,* ut
in solennibus jejuniis et luctu pœnitentiali *sacco* se induerent,
et *cineres* crinibus inspergerent, nullo Dei mandato præceptum
legimus; apud *Judæos* tamen, longo per aliquot retro secula
usu ita moribus receptum est (*consuetudine* diuturna, ut fieri
amat, *vim legis* obtinente,) ut Christus eo loquendi genere,
tanquam ex recepto more gentis, sine aliquo affixo *nigro Theta,*
6 aliquoties usus fuerit; ut *Matth.* xi. 21. *Sexto,* e scriptis
Rabbinorum constat, *Judæis* illud etiam in morem positum
fuisse, ut ante *cœnam Paschalem* pater-familias pedes suorum
incurvatus *lavaret:* quod, etsi nulla Dei lege imperatum, a
Christo tamen observatum liquet ex historia Evangelica, *Joh.*
xiii. Quid attinet *Synagogas* ad commoditatem sacrorum con-
ventuum per oppida et vicos ubique extructas; aliaque com-
pluria, quorum ingentem farraginem suppeditant *Judæorum*
commentarii, enumerare? Ex quibus omnibus illud saltem
efficitur: si *Judæis* sub illo severioris disciplinæ jugo tam
multa licuerint ad *Dei cultum* pertinentia, quæ nullo *Speciali*
Dei mandato niterentur: non posse ab illius populi exemplo,
ad evertendas *leges humanas Ecclesiasticas,* idoneum peti
argumentum.

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tion of the Passover, the master of the house washed the feet of his guests; which was not a command of the Law, but was observed by Christ.

Synagogues, and the like, were established among the Jews without any command of God.

If then the Jews, under their severer yoke of discipline, were allowed to use many forms of Worship not founded on the Law of God; their case cannot supply an argument against all Ecclesiastical Laws made by man.

PRÆLECTIO SEPTIMA.

DE OBLIGATIONE LEGUM HUMANARUM EX PARTE *CAUSÆ EFFICIENTIS.*

Pro. VIII. 15.

Per me Reges regnant, et Legum conditores justa decernunt.

I. De *Legum humanarum obligatione* egimus superiore Termino: cum *in genere,* Quod nimirum *Leges humanæ* rite constitutæ *obligent* subditorum conscientias ad obediendum; tum etiam *in specie,* quoad illa *dubia* quæ ad *Causam Materialem* proprius pertinere videbantur: quatenus scilicet obligent latæ Leges, primo de rebus *impossibilibus;* secundo, de possibilibus sed multum onerosis; tertio, de *necessariis;* quarto, de *illicitis* et inhonestis; quinto, de *malis permittendis;* sexto, de rebus mediis et *adiaphoris* in communi; septimo, de *ritibus Ecclesiasticis* in speciali. In quibus omnibus, eorum quæ dicta sunt, (ne, dum singula repeto, molestus sim,) summa huc redit: *obligari* subditos ad parendum *Legibus justis,* ad parendum *injustis non obligari;* juxta quod in Textu proposito exigit a Legum conditoribus *Salomon,* ut non nisi quæ *justa* sunt decernant. Pergendum porro ad eorum reliqua quæ sunt ante a me proposita persequenda: In quibus tractandis, utar qua potero, et res feret, *brevitate,* ut rem universam, saltem quod ad *Legum obligationem* attinet, idoneo tempore absolvam.

II. In *Causarum* ordine, pro observata mihi alias methodi [a] ratione, *Materiam* proxime sequitur *Efficiens:* excipit

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[a] [supra Prælect. IV. Sect. 3.]

1. *Recapitulation.* We have shewn that Laws bind the Conscience by their nature, and have discussed certain doubts arising on the side of the *Matter* of the Law: namely, how far Laws are binding which are concerning, 1°, Things Impossible; 2°, Things Grievous; 3°, Things Necessary; 4°, Things Vicious; 5°, Of permitting Evil; 6°, Of Things Indifferent; 7°, Of Ecclesiastical Rites. And the general result is that we are to obey just Laws, and not to obey unjust Laws; and hence in the text, "By me Princes decree *justice.*"

hanc *Forma:* ultimum agmen ducit et claudit *Finis.* De
Legum causa Efficiente, quum in *Quintæ Prælectionis Con-*
clusione tertia satis ostensum fuerit, Leges humanas nisi *a*
persona legitimam potestatem habente latas non obligare:
illud nunc imprimis dispiciendum restat, penes quos sit *ἐξουσία*
νομοθετικὴ, hoc est, justa et legitima *Leges ferendi potestas;*
sive quinam sint *Legum conditores* illi, quibus ex mente *Salo-*
monis justa decernendi jus competit. Huic DUBIO PRIMO et
in hoc causæ genere longe præcipuo, ut plene respondeatur,
duo interim supponenda sunt. Suppono itaque *primo*, potes-
tatem *Legumlativam* esse potestatem alicujus *Superioris*, sicut
præcipere, (*præceptionis* appellatione *prohibitionem* etiam
complector,) qui est [b] *actus Legis* proprius, est *actus superi-*
oris. Distare non parum hac ex parte animadvertere est tria
1 hæc: *Promissionem, Petitionem, Præceptionem.* Commune
est omnium indiscriminatim, *Superiorum, Inferiorum, Æqua-*
lium, promittere. Potest enim *promittere* aliquid, et *Pater*
filio, et Filius patri, et *Frater Vicinusve* fratri aut vicino.
2 *Petere* autem proprie est *Inferiorum, Parium* etiam aliqua-
tenus; ut *petit* sibi dari veniam, vel gratiam fieri, a patre

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[b] [conf. supra Præl. VI. Sect. 21.]

2. The next point to be considered is, Laws as affected by their *Efficient Cause;* after that, we shall have to consider the *Form*, and after that, the *End* of the Law.

In *Prælect.* V., Conclusion III., we have shewn that Laws do not oblige, except when made by a person having legitimate power. We have now to consider:

DOUBT FIRST. Who have a legitimate power to make Laws.

To answer this, we suppose that,

First: The Legislative Power is the power of a *Superior.*

There are three different kinds of communication among men to be considered; Promise, Petition, Command:

Promise is common to superiors, inferiors, and equals. A father promises to his son, a son to his father, a brother or neighbour to his brother or neighbour.

Petition is the act of Inferiors properly, partly of Equals; but not of Superiors except improperly. A son asks a favour of his father, a neighbour of his neighbour; and a father may ask pardon or a favour of his son.

Command is especially the act of Superiors. For an Inferior to command his Superior, or an Equal his Equal, would be absurd. Every Act requires a proportionate Power; and an equal has no Power over an equal.

filius, et a vicino *vicinus:* non item *superiorum*, nisi improprie admodum, et per quandam *συγκατάβασιν*. At *Superio-* 3
rum, et in aliqua *ὑπεροχῇ* vel dignitatis præeminentia constitutorum adeo peculiare est *Præcipere*, ut omnino ridiculus esset, quisquis *superiori*, vel etiam *pari*, aliquid faciendum *par* aut *inferior* serio *præciperet*. *Actus* enim omnis requirit *principium* sibi proportionatum: et *par in parem non habet potestatem.*

III. De *Obligatione* autem, quoad ista tria, sic statuendum. Qui abs alio *petit* quid, *petendo* neutrum obligat; nec 1
se, nec eum a quo petit: quia *Petitio* est actus *indigentiæ*, non *potestatis;* cujus *effectus* cum aliunde pendeat, et non procedat ab ipso *agente*, (petente scilicet) non potest inducere aliquam *obligationem*. Qui autem alteri aliquid pollicetur, 2
promittendo se quidem *obligat;* eum vero cui facta est promissio non obligat. Quum enim *promissio* sit actus liberæ voluntatis; potest quivis homo in quantum est *liberum agens* et *ἐξουσίαν ἔχει περὶ τοῦ ἰδίου θελήματος*, (ut loquitur Apostolus, 1 *Cor*. vii. 37), jus illud et potestatem quam habet in propriam voluntatem *in semetipsum* exercere; at non propterea et *in alterum*. Quia ex vi liberi arbitrii, homo est *dominus voluntatis* propriæ, et actuum *suorum* tantum, non item *alienorum*. E contra vero qui alteri *præcipit*, si 3
præcipiendi jus habet, eum cui præcipit, *præcipiendo* obligat; seipsum non obligat. Eo quod *præceptio* est actus potestatis, auctoritatis et juris in *alterum:* estque ex se aptus natus, nisi aliquid impediat, inducere *obligationem*. Sic *Pater* filio, *Do-*

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3. And as to the Obligation belonging to each of these processes:

(1) *Petition* does not oblige him who asks, nor him who is asked. For it is an act of need, not of power; the effect does not depend upon the agent, the asker, and therefore cannot induce Obligation.

(2) *Promise* obliges the promiser, but not the promisee. For each man in so far as he is a free agent, and (1 Cor. vii. 37) hath power over his own will, may exercise that power over himself; but has no such power over another.

(3) *Command* obliges not the commander, but obliges the person commanded, if there be authority to command: for to command is the special and appropriate act of authority over another. Thus a Father commands a son; a Master, a servant; a General, his soldiers; a King, his people; and God commands men; each, as a Superior, commands with authority what is to be done; and by commanding, imposes an Obligation to do the thing so commanded.

minus servo, *Imperator* militi, *Rex* populo, *Deus* homini, ut *Superior*, facienda *præcipit* cum auctoritate; et *præcipiendo* ad imperata facienda *obligat*.

IV. Suppono *secundo*, potestatem *Legumlativam* esse potestatem *publicæ Jurisdictionis*. Neque enim sufficit ad *potestatem leges ferendi*, ut quis in alios jus qualecunque habeat et *imperium*, ut possit eis facienda *præscribere*: nisi et *potestate* sit præditus *externa*, ita ut possit eos ad imperata facienda *cogere*, et nolentes *supplicio afficere*. Ὁ γὰρ νόμος ἀναγκαστικὴν ἔχει δύναμιν inquit [c] *Aristoteles*. Distinguunt igitur *Scholastici* ἐξουσίαν sive *potestatem* eam quam habet *superior* in inferiorem, in potestatem quam vocant *Dominativam*, et potestatem *Jurisdictionis*: quarum illa minor est, privata magis, et *externæ Jurisdictionis* expers; hæc major, et ἀναγκαστικωτέρα. Distant enim inter se non parum duæ istæ *potestates*, idque triplici potissimum discrimine.
1 *Primo* ratione *Materiæ* sive *Objecti*, quia *potestas dominativa* versatur proprie circa communitatem imperfectiorem et privatam, ut *domum, Scholam, familiam*: *potestas* vero *Jurisdictionis* circa perfectiorem et magis publicam, ut *Civitatem, Exercitum, Rempublicam*.
2 *Secundo*, ratione *Finis*, quia *Potestas dominativa* per se et *primario* ordinatur ad utilitatem *personæ* eam potestatem habentis, id est, *Domini*; in bonum vero communitatis *secundario* tantum et consequenter: quatenus nimirum utile est familiæ ut *pater-familias* ditescat. *Potestas* autem *publicæ jurisdictionis* ordinatur *primario* in *bonum publicum* ipsius communitatis: in bonum

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[c] Ethic. Nic. Lib. x. [cap. x.]

4. *Secondly*, We suppose, that the Legislative power is a power of *public* Jurisdiction.

The power of a Superior over an Inferior is of two kinds (according to the Schoolmen), Magisterial and Jurisdictional.

These two kinds of power differ in three ways:

1°, In the *Matter;* the Magisterial power is concerned about a more imperfect and private community, as a house, a school, a family; the Jurisdictional power about a more perfect and public community, a city, an army, a State.

2°, In the *End;* the Magisterial power primarily is directed to the utility of the person exercising it, the Master: and only secondarily to the good of the community; thus the Master of a Family seeks to enrich himself primarily; which may indeed indirectly be for the good of the family: but the Jurisdictional power is directed primarily to the

vero *personæ* tali potestate præditæ, id est, ipsius Magistratus, non nisi *secundario* et consequenter; quatenus nimirum utile est *Principi*, ut Respublica floreat. *Tertio*, ratione *efficacis* 3
administrationis; quæ in potestate *Jurisdictionis* major est quam in *Dominativa*, propter majorem *vim coactivam*. Exempli gratia, non potest tam efficaciter procurare *pater-familias*, ut jussa sua executioni mandentur a *filiis* aut *servis* suis, quos ei non licet nisi *virga* aut *fuste* corrigere; quam potest *Magistratus civilis* a subditis suis, quos *carcere et exilio* punire, bona eorum *fisco addicere*, *capitis* etiam *supplicio* in ipsos animadvertere, pro jure suo potest; ἡ πατρικὴ πρόσταξις οὐκ ἔχει τὸ ἰσχυρὸν, οὐδὲ τὸ ἀναγκαῖον, inquit loco proxime laudato idem *Aristoteles*. Ergo ad *leges condendas* non sufficit quævis *superioritas;* sed præter *dominativam* illam, requiritur etiam δύναμις ἀναγκαστική, sive *potestas Jurisdictionis* proprie dictæ: ita ut *Leges* ferri non possint, nisi a persona habente *publicam coactivam potestatem*. Intelligitis ut opinor, ne sit necesse me vos illud admonere, quæ sunt a me jam dicta ad *Leges* κυρίως dictas *absolute* pertinere; ad reliquas, non nisi κατ' ἀναλογίαν, suo quodam modo et *proportione:* prout earum unæquæque ad istarum perfectionem aut accedunt propius, aut ab ea longius absunt.

V. His duabus *Hypothesibus*, quæ quorsum tendant ex his quæ statim dicturus sum facile intelligetis, addo jam tertio loco *Conclusionem* responsivam; hanc scilicet; Potestatem νομοθετικὴν esse potestatem αὐτοκρατορικήν. Hoc est, jus *ferendi leges* quæ obligent totam communitatem esse penes eum solum (sive sit is *singularis persona* ut in statu regiminis Monarchici, sive *plures* ut in aliis) qui cum *summa potestate* toti communitati præest. Hanc *Conclusionem* explico primum,

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good of the Community, and only secondarily to the good of the Magistrate or Prince.

3°, In the *Coactive Efficacy;* which is greater in the Jurisdictional than the Magisterial Power. Thus the Master of a family can only correct disobedient children and servants with the rod or whip; but the Civil Magistrate can apply to the disobedient, prison, exile, confiscation, even death. And this Coactive Power is a requisite element of Legislative Authority.

We speak here of Laws proper: what is said, is true of imperfect Laws, as far as the analogy goes.

5. Having laid down these two suppositions, we add thirdly, our Conclusion: That the Legislative Power belongs to the Sovereign

deinde confirmo. Pro ejus *explicatione* sciendum *primo,* ad societatum humanarum civilem felicitatem, et commodiorem Rerumpublicarum administrationem, ordinis auctorem *Deum Opt. Max.* non *regimen* modo *politicum* instituisse, ut essent qui populo præessent Magistratus; sed et in ipso regimine *ordinem* etiam *politicum* instituisse, ut vel inter ipsos Magistratus essent *διαιρέσεις διακονιῶν,* varii quidam cum *dignitatis,* tum *potestatis* gradus. Fortassis illud *τεταγμέναι ἐξουσίαι,* quo *militari verbo* usus est Apostolus, *Rom.* xv. 1, eo respicit, ut Magistratuum a Deo non *ordinationem* solum, sed et *subordinationem* (qualis in *militari acie* cernitur) innuere voluerit.

VI. Sciendum *secundo,* in rebus omnibus, inter quas est aliquis ordo, ne fiat (quod natura horret) *in infinitum processus,* necessario tandem perveniri ad aliquod in suo ordine *primum* et summum, in quo stetur. *Magistratus* ergo ejusdem communitatis cum sint alii aliis dignitate et potestate *superiores;* oportet ut sit inter eos aliquis ita reliquis *sublimior,* ut ab illo reliqui pendeant, ipse autem a nullo: ut *Caput* in corpore, *Gubernator* in nave, in exercitu *Imperator:* Supremus scilicet Magistratus; *solo Deo minor,* quique in gubernando commisso sibi populo *nec superiorem habet nec parem:* quem *Apostoli,* [d] *Petrus ὑπερέχοντα,* [e] *Paulus ἐξουσίαν ὑπερέχουσαν,* et *τὸν ἐν ὑπεροχῇ ὄντα* appellant; et Scholastici fere *Caput communitatis:* Cujus est *αὐτοκρατορία* et *Imperii Majestas;* et cui inferiores omnes *Magistratus* universam

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[d] 1 Pet. ii. 13. [e] Rom. xiii. 1; 1 Tim. ii. 2.

Power; (whether this be in the hands of one, as in a Monarchy, or of more.)

To explain this, we remark that there is in societies, by the appointment of Providence, not only Political Government, but Political Subordination. There are various ministrations, one under another. The powers that be (Rom. xiii. 1) are not only *ordained,* but subordinated.

6. Hence there must be a Highest Power, to which the others are all subordinate in successive orders. This is the Supreme Magistrate, the Sovereign, subordinate to God alone: the *Supreme Ordinance* of St Peter (1 Pet. ii. 13), the *Higher Power* of St Paul (Rom. xiii. 1), and those *that are in authority* (1 Tim. ii. 2). Other authorities are as *sent by him* (1 Pet. ii. 14). This authority is the Sovereignty or Supremacy.

illam qua apud populum pollent potestatem suam acceptam ferunt, [f]ὡς δι' αὐτοῦ πεμπόμενοι.

VII. Sciendum *tertio*, pro diversa Rerumpublicarum forma
supremam hanc *potestatem*, quam *Majestatem* vel αὐτοκρα-
τορίαν dicimus, vel in *una* aliqua persona, vel in *pluribus*
positam esse. In statu populari, quam *Democratiam* vocant, 1
summa Imperii est fere penes *Magistratus plures* popularibus
suffragiis annuatim, aut per alia certa temporum intervalla de-
lectos: qui fuit olim status *populi Romani*, cum a *Consulibus*,
Prætoribus, *Tribunis plebis*, *Ædilibus*, aliisque annuis Ma-
gistratibus regerentur. Unde frequentes occurrunt apud *Cice-
ronem* et alios istiusmodi locutiones; *Populi Romani majestas*,
Læsa Populi majestas, *Visum est Senatui populoque Ro-
mano*, *etc.* In statu *Aristocratico* eadem Majestas est penes 2
Optimates quosdam, quos alibi *Illustrissimos* vocant, alibi
regni *Proceres*, alibi aliis eos titulis et appellationibus pro
more gentis insigniunt. Quorum, etsi *unus* aliquis fortassis
(ut in *Republica Veneta*) vel etiam *plures*, possunt habere præ
reliquis aliquam dignitatis et loci præeminentiam, veluti quen-
dam *ordinis primatum*, (qui fuit olim *Romani Episcopi*, et
reliquorum *Patriarcharum* in Conciliis honos:) nemo tamen
est ita reliquis potestate *superior*, ut aut possit de eis singulis
auctoritate sua *judicium ferre*, aut non possit abs eis universis
ipse *judicari*. Cujus regiminis effigiem qualemcunque *Majores
et Aldermanni* in villis nostris; *Collegiorum Præfecti et Socii*
in Academiis, etsi leviter admodum, aliqua tamen tenus repræ-
sentatam nobis exhibent. At in statu *Monarchico* (ut vel ip- 3
sum nomen indicio est) unius *Regis* personæ inhæret summa

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[f] 1 Pet. ii. 13.

7. This Sovereignty may reside in one person or in more.

In a Democracy, the Sovereignty is posited in certain Magistrates, chosen annually, or at other intervals. Such was the constitution of ancient Rome. See the text.

In an Aristocracy, the Sovereignty is in the hands of a body of Nobles, or by whatever name they may be called. In this case, though one person, as the Doge at Venice, or several, may have a certain pre-eminence, as presiding over the Order,(as the Bishop of Rome and the other Patriarchs in Ecclesiastical Councils used to do,) yet no one is superior to the others in such a way as to be able to pronounce judgment on any of them by his own authority, nor as to be exempt from the judgment which they collectively may pronounce on him. We have, to a certain extent, an image of such a government in the

potestas. Unde [g]*Petrus*, optimus *Pauli* interpres, monet populum Christianum, ut *Regi* pareant ὡς ὑπερέχοντι: Nequis ultra dubitare possit, quid sibi velit illud *Paulinum* [h]ταῖς ὑπερεχούσαις ἐξουσίαις. [i]*Samuel* etiam, ut propheta Dei, ita *Regiæ potestatis* plenitudinem populo cogitandam proponit. Ut siquis *Rex* in suo Regno *Supremus*, singula quæ ex illo capite sibi licere constat, nulla subeunte justa causa, sed mera dominandi libidine faceret, et se *pro Rege tyrannum* ostenderet; etsi non esset ἀναμάρτητος, nec peccato careret apud Deum: esset tamen ἀνυπεύθυνος, nec deberet a populo coerceri; dicique propterea mereretur, abusus quidem ille *potestate sua*, sed tamen *sua*. Apud nos *Anglos* saltem quid potest aut certius constare aut liquidius, (nisi siqui in sole meridiano cæcutire malint, quam uti oculis,) quam ad unam serenissimam *Majestatem Regiam* supremam trium istorum *Regnorum* potestatem pertinere? Quem et *Majestatis* titulo, non modo ex

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[g] Epist. 1. ii. 13. [h] Rom. xiii. 1. [i] 1 Sam. viii.

Mayors and Aldermen of our Towns, and in the Heads and Fellows of our Colleges.

In a Monarchy the Sovereignty is in the King alone; and so Peter says (1 Pet. ii. 13), *to the King as Supreme,* thus explaining what Paul means by the *Higher Powers* (Rom. xiii. 1).

In 1 Sam. viii., when the Israelites asked for a king, the prophet explained to them that the king's power would be absolute, and his government oppressive. And he implied that if the king were, even without just cause, and of his mere will, to perform the oppressive and rapacious acts there enumerated, and be a tyrant instead of a king, though he would not be guiltless before God, he would not be accountable to man. It would be an abuse of his power, but still, of power which was *his*.

And, says Sanderson, it is quite clear that in England the Sovereignty of the three kingdoms belong to the King. We call him *His Majesty,* which implies Sovereignty. And in the sanctions of Laws, and the formularies of Law, we speak of him as *over all persons and in all causes within his dominions supreme.*

[Although Sanderson, in succeeding Sections, modifies and limits this idea of the King's Sovereignty, so as to recognize the other elements of the English constitution, yet we see, by the reference to 1 Sam. viii., and the inference of the duty of non-resistance that he is practically indisposed to set any bounds to the Royal Power in England. His use of the term *Sovereignty* favours this tendency: for though sometimes, as in Sect. 8., it is made to mean only the necessity of the Royal Consent in legislation, in other places the Sovereignty is identified with the Legislative Power.]

usu loquendi communi, sed et in solennibus *Legum sanctionibus*, et in omnibus *juris formulis* et actionibus, insignire solemus; et *omnium personarum causarumque in suis regnis supremum, imo et solum supremum Moderatorem*, solenni præstito juramento (tactis sacrosancti Dei Evangeliis) agnovimus.

VIII. Sciendum *quarto*, Cum dicimus penes *unum Regem* esse jus condendarum *Legum*, non id ita intelligendum, quasi vellemus quicquid *Regi* libuerit jubere id continuo *Legis* vim obtinere; nam et *populi consensum* aliquem, aliaque nonnulla ad *Legem constituendam* requiri mox ostendam. Quin hoc est quod volumus, quod scilicet *Plebiscita, Senatus-consulta*, ceteræque *Procerum Plebis*, aliorumque quorumcunque *rogationes*, nisi *Regia* insuper auctoritate muniantur, non *obligent* subditos, nec habeant *vim legis:* quibus tamen mature et rite præparatis simulac *Regis* accesserit consensus, *Legis* nomen, formam et auctoritatem protinus accipiunt, incipiuntque statim ac promulgatæ fuerint, subditos *obligare*. Cum igitur illa sola censenda sit cujusque rei *causa efficiens* principalis et sufficiens, quæ *per se* et immediate

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8. When we say that the King alone has the power of making Laws, we do not mean that the King's mere pleasure has the force of Law; for there is required, besides, the consent of the People, and other things, to make a law, as will be shewn. But we mean that Resolutions of other branches of the community, (as Commonalty, Senate, Nobles,) except confirmed by the Royal Authority, have not the force of Law, and do not bind the subject: whereas, certain Resolutions of this kind, passed in due order and due form, as soon as they have received the Royal Consent, do forthwith receive the name, form, and authority of Law; and, as soon as they are promulgated, do bind the people. Hence the Will of the Prince is the sole and complete *Efficient Cause* of Laws. For that is the Efficient Cause of anything, which produces that thing of itself and immediately, or which introduces, into the *Matter* fitly prepared, that *Form* which gives the name and essence; even if other concurrent or antecedent conditions be necessary to dispose the matter to receive that form.

[The necessity of the Royal Consent as the *last step* in making English Laws, is used to prove that the King's Will is the Efficient Cause of Laws; and the consent of Parliament is reduced to the rank of an antecedent condition,—an operation which prepares the *Matter* to receive the *Form* of Law. This was not a just representation of the English constitution, even under the Stuarts. The Consent of Parliament was as requisite in Legislation, as the Consent of the King.]

producit, et in materiam præparatam *introducit* eam *formam*, quæ illi rei dat *nomen et esse*; etsi ad productionem ipsius effectus alia etiam *concurrere* oporteat, vel *antecedere* potius, ut *prævias dispositiones* quo materia ad recipiendam formam ab agente intentam aptior reddatur: omnino constat, quotcunque demum ea sint quæ ad *Legem* recte constituendam *antecedenter* requiruntur, *voluntatem* tamen *Principis* (ex cujus unius *arbitratu* et jussione omnes *Legum rogationes* aut *ratæ* habentur aut *irritæ*,) esse solam et adæquatam *publicarum Legum efficientem causam.*

IX. His præmissis, confirmatur *Conclusio* multiplici argumento. Imprimis testimonio Sacræ Scripturæ.

(1) In celebri illo [k]*Jacobi Patriarchæ* jam morituri testamento, *Non auferetur Sceptrum de Juda, et Legislator de femore ejus,* vaticinium est de futura in illa tribu *Regia dignitate:* quam περιφραστικῶς describit pius senex, adhibitis in eam rem potestatis regiæ et notissimo insigni, *Sceptro,*

[l]Σκηπτοῦχοι βασιλῆες,

et potissima prærogativa, *jure legislativo.*

(2) [m]Moses eo nomine fuisse dicitur quasi *Rex in Israele,* quod congregatis principibus populi et tribubus *Legem* eis præceperit;

(3) [n]*Judah Legislator meus,* id est, *Rex:* sicque ibi vertit vulgatus interpres, *Judah Rex meus.*

(4) In *textu* demum proposito. [o]*Per me Reges regnant, et Legum conditores justa decernunt:* ubi (quod solenne est *Salomoni* in toto hoc *Proverbiorum* volumine, ut versus pars posterior prioris, aut *exegesin* contineat, aut *antithesin*,) iidem ipsi, qui in priore commatis parte, *Reges*, in posteriore ἐξηγητικῶς *Legum conditores* dicuntur.

(5) In novo etiam Testamento νόμου βασιλικοῦ meminit [p]Jacobus Apostolus.

X. Confirmatur *secundo* Philosophorum, Historicorum,

[k] Gen. xlix. 10.
[l] [Hom. Il. α'. 86: Od. β'. 231 etc.]
[m] Deut. xxxiii. 4, 5.
[n] Psalm. lx. 7.
[o] Prov. viii. 15.
[p] Epist. ii. 8.

9. We have now to give proofs of our Conclusion (Sect. 5), that Legislation belongs to the Sovereign Power in the state.

Argument First. In Scripture the power of making Laws is identified with the Royal Authority. See the passages.

et *Juris* cum *civilis*, tum nostri Anglorum *municipalis* Consultorum, quæ passim occurrunt frequentibus testimoniis: Nos paucissimis, ut in re manifesta, contenti erimus. Legem *Principis* opus esse asserunt *Aristoteles*, *Plutarchus*, aliique innumeri optimæ notæ auctores. Sed imprimis celebre est illud [q] *Ulpiani*, quod in Jure Romano habetur, *Quod Principi placuit Legis habet vigorem.* Quod, ne ἁπλῶς et perperam intellectum tyrannicæ dominationi viam struere videatur, sic olim explicuit [r] *Bractonus* nostras: *Quod Principi placuit;* id est, non quicquid est a Rege temere et ex animi perturbati impetu quodam et æstu præsumptum, sed quicquid ex *Magnatum suorum consilio*, regio assensu auctoritatem præstante, et *habita super hoc deliberatione et tractatu* (sic enim ille loquitur) *recte fuerit definitum.* Quin et in Jure nostro, et in quotidianis processibus juridicis in foro contentioso, ex solenni formula *Regiæ Leges* dici solent (The King's Laws): non aliam ob causam, ut nos docuerunt Juris nostri periti, quam quod *Reges Angliæ* sint *fons justitiæ et Legum;* et Legibus ipsis (ipsis legibus idipsum αὐτολεξεὶ profitentibus) *ut pro Legibus habeantur* vim omnem imponendi habeant concessam sibi a Deo [s] αὐτοκρατορικὴν potestatem. Ut nihil sit opus, in pluribus congerendis testimoniis operam collocare non necessariam.

XI. Sed enim et istis supersederi potuisset, si non tam claræ luci nebulas offundere conatus esset, putidissimo suo et ante hæc infelicia tempora inaudito figmento, de *coordinata*

q [Libro I. Institutt.: conf. Justinian. Institut. Lib. I. Tit. ii. Sect. 6.]

r [De Legg. Angliæ, Lib. I. cap. i. fol. 1. ...*cum legis vigorem habeat, quicquid de consilio et de consensu magnatum, et reipublicæ communi sponsione, auctoritate regis sive principis præcedente, juste fuerit definitum et approbatum.*]

s *Cui* αὐτοκρατορικὴν *legibus ipsis legum vim imponendi potestatem Deus dedit.*—Finch. Νομοτεχν. in Epistol. dedicat. [ad Jacob. R. p. vi.]

10. *Argument Second.* Philosophers, Historians, Jurists, both Roman and English, testify to the same. The old maxim of Ulpian, "The Prince's pleasure has the force of Law," is well known. This is explained by Bracton, "The Prince's pleasure, as determined in his Great Council on due deliberation."

[It is plain that the English Lawyer's explanation quite destroys the force of the Roman maxim.]

Moreover the Laws are called *the King's Laws;* and the Lawyers teach that the Kings of England are the fountain of justice and of law: and such is the language of the Laws themselves.

nescio qua *potestate* ἀνώνυμος nescio quis tenebrio. Qui ut νεωτεριζόντων quorundam nefariis consiliis et conatibus supparasitaretur, (quæ cum omni *Juris* præsidio destituerentur, specioso tamen aliquo tibicine quantumvis tenui et infirmo, fuerant pro tempore suffulcienda;) edito libello id agit sedulo, ut populum dedoceat inanem illam philosophiam, qua hactenus ei impositum est ab iis qui negant *contradictoria posse simul esse vera.* Regem scilicet et *supremum esse,* id est, *non habere parem;* et *habere parem,* id est *non esse supremum.* Fuisse tamen, qui hoc tam ridiculum commentum, ut cœlitus delapsum *σοφὸν φάρμακον,* (nimirum quod ipsorum intererat hæc vulgo credi) avide arriperent, et ambabus ulnis amplexarentur, non tam mirandum est; quam dolendum reperiri potuisse, qui tam crasso sophismate sibi persuaderi paterentur, ut turpissimo se interim perjurio alligarent. Quid enim *perjurium* dici mereatur, si hoc non sit manifestissimum *perjurium;* quem *solum esse supremum in suo regno moderatorem* conceptis verbis juraveris, ei *parem* aliam in suo regno *potestatem* constituere et agnoscere? Apage ergo cum suis portentosis strophis *Coordinatorem* nostrum, qui nobis hanc remoram injecit: et pergamus.

XII. Confirmatur dicta *Conclusio tertio Ratione.* Præcipuus *actus* gubernationis præcipuam requirit *potestatem: Actus* enim omnis, cum sit exercitium alicujus *potentiæ,* supponit in agente *potentiam* sibi proportionatam. Est autem *νομοθεσία,* sive *Legumlatio,* [t]actus gubernationis supremus et præcipuus. Non ergo potest exerceri nisi a *persona* habente, aut saltem in virtute et ex auctoritate habentes *supremam potestatem* et jurisdictionem in communitatem sibi subjectam. Cum enim *Jurisdictionis* sive *Potestatis politicæ* duæ sint

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[t] [conf. infra Prælect. IX. Sect. 1.]

11. An anonymous writer has asserted, that the powers of the King and the Parliament are *co-ordinate.* But this is an absurdity. The King cannot both be supreme and have an equal. This doctrine of co-ordinate power is contrary to the oath of supremacy.

12. *Argument Third.* The principal Act of government requires the principal Power. But Legislation is the supreme Act of government; therefore it requires the supreme Power.

To explain this further, observe that there are two principal kinds of Political Power; Legislative and Judiciary. Both deliver *Jus* or Law, and are hence said to involve *Jurisdiction;* but with this

nobilissimæ et præ reliquis præcipuæ sive species sive partes, *νομοθετική* et *κριτική*, Potestas scilicet *Legumlativa*, et Potestas *Judiciaria;* harum utraque in *jure dicundo* consistit: unde et *Jurisdictionis* nomen. Sed cum hoc discrimine, quod Jurisdictio *Judicis* sit *juris* tantum *dati dictio;* Jurisdictio vero *Legislatoris* sit *juris* etiam *dandi dictio:* Unde sequitur multo angustiorem esse illam *Judicis* potestatem, augustiorem hanc *Legislatoris*. Illius est *jus populo dicere*, et ex *lege* jam lata sententiam ferre: hujus vel ipsi *Judici jus dicere*, et quæ sit ipsi judicandi norma *Legem* de novo condere. Ille ex præscripto *juris constituti* pronunciare tenetur: hic ex plenitudine potestatis *præscribit* et constituit *jus*, quod non minus *judex* ipse inferior, quam reliquus *populus*, tenetur in posterum observare. Non est igitur inconveniens, *potestatem judiciariam*, cum sit inferioris generis potestas, ab *inferiore* etiam persona ordinarie exerceri: at *suprema* illa et *architectonica leges ferendi potestas* omnino expedit, ut non nisi a persona cujus sit *suprema potestas* exerceatur. Atque de Dubio primo hactenus.

XIII. Dubium secundum est, An ad *Legis Obligationem* requiratur *populi consensus*. Ex jam dictis enim possit fortassis aliquis existimare *potestatem ferendi Leges* ad *Principem* ita pleno jure pertinere, ut ex nostra sententia *subditorum* nullæ essent omnino hac in re partes, nec, siquid ille

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difference: the Jurisdiction of the Judge is the delivery of Jus or Law already given; the Jurisdiction of the Legislator is the delivery of Jus or Law which is to be given. Hence the power of the Legislator is of a larger and loftier kind than that of the Judge. The Judge has to pronounce sentence to the People, according to Law already made: the Legislator has to put forth Law for the Judges, and to make Rules for judging. The former is bound to decide according to constituted Law; the latter prescribes and constitutes Law, which is binding both on Judge and on People. Hence the Judiciary Power may be ordinarily exercised by an inferior person; but the supreme and *architectonic* power of making Laws can only be exercised by the person who holds the supreme power.

[The term *architectonic*, implying that power or art to which other arts are subordinate or instrumental, is borrowed from Aristotle, *Eth. Nicom.* I. 1.]

13. The Second Doubt is, Whether the consent of the People be required to the obligation of Laws.

That some kind of consent of the People is required, is acknowledged by all good writers. Even the Jesuits, who assert so strongly

statueret, populo quicquam superesset aliud quam jussa capessere, et colla jugo subdere. Et sane videtur pro dominantium libidine, illud, *Sic volo sic jubeo,* apud prisci seculi *Reges* ita obtinuisse, dum mera *Principum arbitria pro Legibus* erant: ut ipsum *Tyranni* nomen innocens initio et honestum, ex tam salutaris potentiæ fœdo abusu, in contumeliam jamdiu abierit, et horrendum aliquid auribus nostris, quoties auditur, inferre putetur. Atqui *populi* saltem *consensum* aliquem requiri, et ante præmonui; et ab omnibus, quos mihi videre contigit, probatissimis scriptoribus conceditur. Adeo ut ipsi *Jesuitæ,* qui sunt *Œcumenicæ* et nullis conclusæ finibus *Pontificis* sui *omnipotentiæ* assertores acerrimi, excusandos tamen ob non servatas *Concilii Tridentini et Bullæ Cœnæ Leges,* eo solo nomine putent in *Germania* et alibi multos, quod in iis gentibus nunquam fuerint illæ Leges *usu receptæ.* Dico igitur, et est communis sententia, institutas et propositas a capite communitatis seu *Principe* Leges; non *obligare* subditos, nec *vim Legis* habere, nisi ab ipsa *communitate* recipiantur, et utentium vel *suffragiis* vel *moribus* comprobentur. [u]Demostheni Lex est πόλεως συνθήκη κοινὴ, *Communis sponsio civitatis:* cujus siquem minus moveat hac in causa auctoritas, quod in *Atheniensium Republica populari* versaretur; accedat *Juliani Juris consulti* auctoritas, qui sub *Romanis Imperatoribus* vixit pleno jure imperantibus; cujus verba sunt, *l.* 32. *F. de Legibus; Ipsæ Leges nulla alia ex causa nos tenent, quam quod judicio populi receptæ sunt.*

XIV. Sed enim istius *receptionis* sive *consensus* necessitatem, etsi omnes agnoscant, non tamen ex eodem fonte omnes accersunt. Sunt qui putent, *populi consensum* in condendis

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[u] [contr. Aristogit. Orat. I., Opp. p. 774. Sect. 16, ed. Bekk.]

the unlimited power of the Pope, still hold that many persons in Germany and elsewhere, are excusable in not observing the Decrees of the Council of Trent, and the Bull *In Cœna Domini,* because those Laws were never accepted by custom in those countries.

We hold then that Laws made by the Prince or Head of the Community do not oblige the subject, and have not the force of Law, except they be received by the community, and approved by the vote or the custom of those who have to use them. Demosthenes the republican, and Julian the imperial jurist, alike acknowledge this.

14. But why is the consent of the People necessary?

Some say, because Princes derive their power from the consent of the People; and the People may resume the power which they have

Legibus propterea requiri, quod *Principes* potestatem suam omnem *a populo effluxam* habeant; qua si *abusi* fuerint (*abuti* autem potestate sua censendi sunt, si eam longius latiusve proferre et extendere velint quam populo visum fuerit,) poterit *populus* pro jure suo *potestatem* quam ipsis ante concesserat denuo *resumere.* Periculoso admodum errore, et quem merito abominari debeant, quotquot non sunt humani generis et publicæ tranquillitatis hostes. Nititur enim tota hæc ratio *duplici fundamento;* debili utroque et ab omni sana ratione alieno: altero, *Principes* totam potestatem suam *populo acceptam* ferre; altero, *potestatem* quisquis alteri *concesserit,* posse eam cum ipsi libuerit *revocare. O egregium Sophistam* si hæc ita essent, *Samuelem* magis, qui ut populum θεοκρατίας jamdiu pertæsum a perverso *rerum novandarum studio* absterreret, *Regiæ potestatis* amplitudinem eis ob oculos proposuisse satis habuit? an magis *fatuum popellum Israeliticum,* qui sui juris ignarus pati se potuit tam futili sophismate sic ῥινὸς ἄγεσθαι, ut plane obmutesceret? Adeone omnes bardos et stupidos, nulliusque aut *mentis* aut *animi,* ut nec unus aliquis in tam magna populi corona reperiri potuerit, cui tantum inesset *acuminis* et *audaciæ* ut ad ista omnia prompte responderet? cum tam facile fuerit *Samueli* sic peroranti statim regessisse, "Pueris hæc minare et qui nihil sapiunt: nos, si sic dominari cœperit Rex noster, *jure nostro* utemur; *auferemus* ei mox eam quam ante *dedimus potestatem.*" Quam brevi responso totum negotium confecissent et os prophetæ in æternum obturassent, si retrioribus illis seculis tam credita fuissent hæc novorum Magistrorum figmenta, quam sunt ab illis fidenter discipulis suis obtrusa, et a temeraria plebe lubenter excepta.

XV. Sed ut serio agamus, et ad rem ipsam accedamus propius, *Dico primo,* Præsidendi in Republica *potestatem,*

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given, if the Prince should abuse it, by extending it further than the People think good.

This is a dangerous errour, and rests upon two false assumptions: that Princes have received their power from the People; and that he who concedes power to another may revoke it.

If the latter assumption were true, how idle were all Samuel's warnings to the Jews, respecting the evil which would arise from their having a king. They might have said, "If we find it so great an evil, we will revoke the power which we have given." But it is plain that such a principle was not then acknowledged.

quocunque tandem *modo* ad eam perveniatur, *ab* [x]*ipso Deo* esse, *solo et immediate,* nullatenus autem a *populo.* Apertissima sunt in hanc rem Sacræ Scripturæ testimonia. *Per me Reges regnant, Prov.* viii., id est, mea unius, non humana aliqua auctoritate. *Quæ sunt, a Deo sunt,* (non a populo,) *constitutæ potestates, Rom.* xiii. 1. Ipsi *Magistratus* qui populo præsunt, *Dei* sunt *administri,* Θεοῦ λειτουργοὶ, Θεοῦ διάκονοι, *Ibid. vers.* 4, 6 ; *Dii* propterea dicti, *Psalm.* lxxxii. 6, quod ipsius *Dei* in terris [y] vices gerant, idque *Deo* ipsis conferente hanc potestatem, non *populi* suffragiis, *Ego dixi Dii estis.* Poteritne *populus* aliquis sine turpis *idololatriæ* crimine *sibi Deos constituere,* cum sit uniuscujusque hominis, ei qui ipsius vices gerat, *potestatem vicariam* sua *auctoritate* demandare, non alieno *arbitratu ?* Audebitne quisquam mortalium id juris sibi arrogare, ut qui *Dei* in terris *minister et Vice-Deus* futurus sit, omnem illam suam *auctoritatem* et *potestatem* ab ipso sibi collatam agnoscat? Utut fortassis poterint esse *populi* circa *personam* ut potestatis *subjectum* partes aliquæ (ut mox videbimus;) quemadmodum in *genera-*

[x] Ἐκ δὲ Διὸς βασιλῆες. — Homer. Hymn. [xxv. 4: Hesiod. Θεογον. v. 96.]

[y] *Non alio animo* [*civitas*] *rectorem suum intuetur quam si dii immortales potestatem visendi sui faciant.*—Senec. de Clement. I. 19: [conf. supra Præl. VI. Sect. 11.]

15. In reply to the above doctrine we say,

First, that the authority of the Supreme Governor, in whatever manner acquired, proceeds from God, and by no means from the People.

This appears from Scripture. See the passages, Prov. viii. 15, Rom. xiii. 1, 4, 6; Psalm lxxxii. 6, *I have said, Ye are gods;* addressed to the Rulers, as the representatives of God, from whom their authority is, not from the suffrages of the People.

A man who has authority deputes it to his representative according to his authority, not according to the will of any other: and he who is to be the minister of God, and in place of God, cannot receive his power from any other than God. For a People to pretend to constitute its own Rulers, is to make itself gods; which is idolatry.

This does not exclude the People having a voice in selecting the *person,* of which we shall afterwards speak. The *Subject* in which the Power is to be invested, may be determined by other conditions; just as there are previous dispositions which prepare the Matter to receive the Form, but yet the production of the Form in the Subject Matter is the immediate work of the Agent. And thus, the conferring the Governing Power is the work of God, whatever conditions determine

tione rerum naturalium, sunt aliquæ *prævice alterationes,* quæ præparent et disponant *materiam* ad recipiendam *formam* introducendam: *collatio* tamen *potestatis regitivæ*, sive applicatio ejus ad personam non est *populi* opus, sed *Dei* ipsius *immediate;* sicut *productio formæ* in subjectam materiam est *immediatum* opus *agentis* sive *generantis.* Scitum est illud Irenæi, [z] *Cujus jussu homines nascuntur, hujus jussu et Reges constituuntur.*

XVI. *Dico secundo,* (ut digitum ad fontes intendam) *dominationem politicam* ab initio non nisi *patriæ potestatis* propaginem fuisse. Ipsa rerum primordia quibus otium est paulo diligentius rimari, gentes deprehendent olim non ex *mutua populorum consensione* in *Regna* et *Respublicas* coaluisse; sed inter *Noachi* posteros aliquandiu omne *imperium* intra *paternæ auctoritatis* metas constitisse. Nondum *Reges* erant; sed nec *Reguli* quidem; nedum amplissimarum ditionum *Monarchæ:* multo autem minime *Aristocratici* vel *popularis status* regimina; inaudita priscis sæculis toto orbe nomina; et in *Græcia* primum, gente *levi* et *cupida novitatis,* *καινοτομούντων* quorundam libidine vel furore, introducta. Penes [a] *familiarum capita* stetit adhuc omnis dominatio, in quibus qui [b] *primogenitus* erat cujusque familiæ, sine suffragiis

[z] Contra Hæres. Lib. v. [cap. xxiv., ed. Grabe.]

[a] *ἐν οἰκίᾳ πρῶτον ἀρχαὶ καὶ πηγαὶ πολιτείας καὶ δικαίου.*—Aristot. Ethic. Eudem. Lib. VII. cap. x.

[b] *πᾶσα οἰκία βασιλεύεται ὑπὸ τοῦ πρεσβύτατου.*—Id. Politic. Lib. I. Cap. ii., [Sect. 7, ed. Stahr.]

the Person of the Governor. Irenæus says, that "He by whose command men are born, is he by whose command kings reign."

[The distinction of the essence of the Governing Power, as proceeding from God, and of the Person of the Governor, as determined by other conditions, is tenable; without retaining the ancient distinction, of the latter as the Subject Matter, and the former as the Form or Essence impressed upon it. But when the doctrine, that the Power of the Governor comes from God, no longer prohibits the transfer of that Power to another Person, it ceases to be available for the defence of any particular Governor.]

16. *Secondly,* we say that Political Government was at first the offspring of Paternal Power. This may be seen to have been the case in the earliest times, before such things as Kings, Nobles, or Commonwealths, were introduced by the Greeks, always fond of novelty. The Government was in the Heads of Families, and descended by primogeniture, including the administration of both sacred and civil matters, and judicial authority; and in the course of time,

aut electione aliqua quodam quasi naturæ jure, et *sacrorum* et *civilis administrationis antistes*, et totius cognationis *princeps* habebatur. Qui *pro suo arbitratu* delinquentes *moderatis* primo *pœnis* castigabat; mox excrescentibus in magnam multitudinem familiis, *gravioribus suppliciis* nocentes coercuit: donec tandem, aucta indies hominum multitudine, et succrescentibus una vitiis, irrogandi sceleribus *capitalia supplicia* accessit necessitas. Inde factum ut *pater* in liberos totamque familiam *jus* olim haberet [c] *vitæ et necis:* cujus juris, etiam post constitutos plerisque in gentibus *Reges*, manserunt tamen diu vestigia quædam. Hinc illa notata [d] *Aristoteli*, (sed improbata,) *patriæ potestatis* apud *Persas* nimia severitas: et vetus illa quæ apud *A. Gellium Noct. Attic. lib.* 5, *cap.* 19, extat arrogandi liberos solennis Romanorum formula: VTI . EI . VITÆ . NECIS . Q. IN . EO . POTESTAS . SIET . VTI . PATRI . ENDO . FILIO . EST. Ab his initiis, per incrementa *familiarum*, pullularunt paulatim ubique terrarum *Regna:* quibus qui præerant, et *Reges* dicti sunt, et in suis ditionibus, exiguis illis quidem (unica fortassis *urbecula* cum paucis adjacentibus *pagis* et *viculis*) *merum* tamen *imperium* exercuerunt. [e] *Principio rerum, gentium nationumque imperia penes Reges erant:* sic historiam suam orditur Justinus. Et ante eum Cicero, [f] *Omnes* inquit *antiquæ gentes regibus quondam paruerunt.* Et utroque antiquior [g] Aristoteles eas *civitates* testatur quæ suo tempore *liberæ*

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[c] *Pater jussi. Hoc nomen omni lege majus est. Jus nobis vitæ necisque concessum est.*—Quintil. Declam. 6. [§ 14.]

[d] [Ethic. Nicom. Lib. VIII. cap. 12, ed. Bekker.]

[e] Justin. Hist. I. 1.

[f] Cicero de Legg. Lib. III. [cap. ii.]

[g] τὸ πρῶτον ἐβασιλεύοντο αἱ πόλεις καὶ νῦν ἔτι τὰ ἔθνη.—Aristot. Politic. Lib. I. [Cap. i. Sect. 7, ed. Stahr.]

the power of life and death, noted (though condemned) by Aristotle, as the right of fathers among the Persians: and retained among the Romans, so that the form of adopting a son was, "that he have over him power of life and death, as a father has over a son." Out of this grew kingdoms and kings: see the passages from Justin, Cicero, and Aristotle. At first the kingdoms were small. See Joshua xii. and Judges i. 7. And thus, kingdoms arose from the power of the Head of the Family, not from the act of the People.

[The arguments against this *Patriarchal System* of Politics are well known. Many of the assertions which it involves are doubtful or false; and at every step of the changes which it supposes, there enter portions of the other element, Popular Consent, which it endeavours to exclude. See *Elem. Moral.* Art. 818, sqq.]

habebantur (*Græcas* nimirum et earum exempla secutas intelligit,) sub *regio* primitus *imperio* fuisse. Hujus quam dixi *originis*, inter alia plurima, hoc quoque argumentum est non leve, quod tam arctis finibus claudebantur olim *Regum ditiones*, ut in una *Canaanitide*, regione non magna, *triginta et unum Reges* ab Israelitarum Duce *Josue* debellatos habeamus. *Jos.* cap. xii.: quibus tamen superstitem reliquisse eum istiusmodi *Regulorum* numerum duplo fere majorem, non improbabili conjectura vel ex eo mihi colligi posse videtur, quod non multo post ipsius *Josue* excessum *Adoni-bezekum* in *septuaginta Reges* a se devictos barbaro more sæviisse legimus, *Jud.* i. 7. Quid multa? Magnæ familiæ *principem* inter, et angusti territorii *Regem*, tam exile discrimen est, ut *nomine* et [h] *mole* magis, quam *re* et *potestate*, distare inter se videantur: ita ut nemini possit esse dubium, siquidem rationes rite subducere velit, *patriam dominationem* procedente tempore, paulatim et imperceptibili auctu, in *regium nomen et imperium* adolevisse; nec aliunde quam ex hoc capite petendam esse *summi Imperii originem.* Et hactenus sane, in conferenda *regia potestate*, nullas fuisse, nec quidem esse potuisse, *populi* partes, certo certius est.

XVII. Ex his, ut opinor, satis conficitur (ut illud obiter adnotem, quod dignum est observatu,) illam *regiminis formam*, in qua totius *familiæ primogenitus* in jura paterna succedit ut *propinquior hæres*, merito ceteris preferendam esse; cum ob alias plurimas nec contemnendas rationes, tum vel hac una de causa maxime, quod *origini* suæ, ad quam homines natura ipsa quodammodo instituisse videtur, optime respondeat. A qua *antiquissima* et naturæ congruentissima *forma* simul abscessum est, (impotenti scilicet et effræni *dominandi libidine* alias

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[h] οὐ τῷ ὅλῳ καὶ παντὶ, ἀλλὰ τῷ πόσῳ μόνῳ διαφέρει.—Gregor. Presb. in Vit. Greg. Nazianz., præfixa ipsius Opp., Tom. I. p. cxli. c, ed. Bened.]

17. Hence hereditary monarchy, continued by primogeniture, is better than other forms, as more consonant to the origin of government.

Those who succeeded to political authority otherwise than by legitimate succession, were promoted in one of these ways: *First*, by Force, either by mere usurpation, or by just war. But in these cases they did not owe their authority to the people, any more than those who succeeded by hereditary right: but, on the contrary, less; since in this case, the people were adverse, in the former, willing, or accustomed to the rule.

sibi vias quibus ad *imperii culmen* ascenderetur moliente,) *tyrannidi* pariter et *popularibus studiis* opportuniora exinde facta sunt omnia. Qui enim alia quam *Legitima successione* imperium obtinent, uno e tribus modis ad regna promoveri necesse est: aut *aperta vi*, et militaribus armis; aut *fraudibus* et astu; aut libera demum *electione.* Qui vi et armis sibi quæsiverunt imperium, sive *mera usurpatione* sine aliquo juris prætextu id factum fuerit, sive *bello justo* hostibus a quibus injuste lacessiti sunt illato, (utrovis enim modo fieri contingit:) hos etiam certum est, auctoritatem suam nihilo magis *subditis* suis debere, quam qui *jure hæreditario* in regna avita succedunt. Quin multo etiam minus: inquantum isti *volentibus civibus* et jugo assuetis, illi *invitis* et (si resistendo pares essent) repugnare paratis dominantur. Ergo nec hactenus apparent in conferenda *summa potestate*, populi ullæ partes.

XVIII. At in stabilienda eorum potestate, qui *tyrannidem per dolum occupant,* negari non potest, *populum* suas habere partes, easque præcipuas. Solent enim qui *tyrannidem* affectant, animum imprimis ad *favorem popularium* conciliandum intendere; [i]*potentiam ex vulgi adulatione quærentes.* Affatim hujus rei exemplorum suppeditant plurimarum gentium historiæ. Apud unum *Trogi* abbreviatorem, quibus artibus [k]*Pisistratus* Atheniensium, [l]Heracliensium *Clearchus,* [m]*Dionysius junior* Siculorum, alii aliorum populorum turbam in suas partes pellexerint, reperire est. *Invidiosis orationibus* credulæ multitudinis animos adversus *optimos* quosque *cives* concitare; nonnulla *publice laudanda* et quæ speciem haberent *clementiæ, justitiæ,* et in plebem *benignitatis,* facere; omne genus *blanditiis* ac *delinimentis,* quibus decipi amat et solet *vulgus,* in civium affectus se insinuare, velut *publicæ libertatis* unicos futuros assertores, vindices et patronos; *simulatio* officii, crebræ *pollicitationes,* injecta *spes* feliciorum temporum et mutandæ in melius publicarum rerum administrationis: hæ nimirum sunt egregiæ *illæ artes,* quibus qui ad

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[i] Justin. Hist. Lib. XIII. cap. iii.
[k] Ib. Lib. II. cap. viii.
[l] Ib. Lib. XVI. cap. iv.
[m] Ib. Lib. XXI. cap. i.

18. *Second,* Men have acquired the supreme power by Fraud. And here we cannot deny that the People's voice goes for a great deal. For those who seek to become Tyrants, court and flatter the People. For the examples, Pisistratus, Clearchus, Dionysius the Younger, and their proceedings, see the text, and the passages quoted.

imperium per *fraudes* affectant viam, [n]incautum et leve vulgus sollicitant, inflectunt, qua libet impellunt, *ἐκχαυνῶντες λόγοις πρὸς κέρδος ἴδιον.* Et quidem

[o]*perraro hæc alea fallit.*

Fit enim plerunque ut *populi favore* suffulti, ipsorumque ope et *opera* adjuti, ad summum illud *honoris* et *imperii* culmen, quo jamdiu anhelabat eorum *ambitio,* tandem conscendant.

XIX. Verum enimvero ista omnia quam parum habeant
momenti ad probandam legitimam *populi* in conferendo summo
imperio *potestatem,* facile pervidebit, quisquis cogitaverit;
Imprimis *a facto ad jus* debile semper habitum esse arguendi 1
genus. Deinde, quæ a populo hunc in modum facta legimus, 2
non fuisse *judicio* facta, sedatoque et sereno, sed concitato et
perturbato affectibus animo. Quinetiam, ubi resederit paulum 3
illa *animorum tempestas,* et astu deceptum se ac ludificatum
populus tandem, sed sero nimis, deprehenderit; facti sui semet
pœnitere, pudere nimiæ credulitatis; temeritatem suam et imprudentiam damnare, qui avida amplificandæ *libertatis spe* inducti, sua se opera in *servitutem tyrannicæ dominationis* ultro tradiderint. Spirant hæc omnia meram *impotentiam,* et animorum *infirmitatem:* ita ut mirus artifex sit oporteat, qui se hinc aliquod sobrii *juris* aut legitimæ *potestatis* argumentum elicere posse confidat.

XX. Reliqua est igitur unica duntaxat *Reipublicæ* species, in qua *popularis* in constituendo principe *Juris* aliqua saltem

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[n] *Nihil est facilius, quam in quemlibet adfectum movere populum.*—Quintilian. Declam. 11, Sect. 7; Eurip. Ἰκετίδ. [v. 410, seq.

πόλις γὰρ, ἧς ἐγὼ πάρειμ' ἄπο,
ἑνὸς πρὸς ἀνδρὸς οὐκ ὄχλῳ κρατύνεται·
οὐδ' ἔστιν αὐτὴν ὅστις ἐκχαυνῶν λόγοις
πρὸς κέρδος ἴδιον ἄλλος ἀλλόσε στρέφει.]

[o] [ex Horat. Lib. II. Satir. V., v. 50.]

19. But this does little to prove the legitimate power of the People to confer the Supreme Authority. For,

1°. We cannot argue from the fact to the right.

2°. What was done in this way by the People was not done advisedly, but with a mind agitated and disturbed.

3°. When the People's mind was calmed and cleared, they regretted what they had done.

Hence we cannot out of such materials construct a right.

20. *Third;* There are Elective Governments. In these there appears some show of a right, proceeding from the People.

In these cases, we do not deny that the People has its legitimate part; but that part is not to originate the Power, but to designate the Person. And these are mostly offices of different authorities.

apparet imago: *Regnum* scilicet *Electivum,* ubi in demortui Regis locum novus succedit *Rex* liberis populi suffragiis *eligendus.* Esse hic *populo* suas partes, easque legitimas et jure bono sibi competentes, prolixe fatemur: non tamen et illud ullatenus largiendum censemus, totam propterea sic *electi Regis potestatem* a populo pendere, aut *populo acceptam* ferri debere. Aliud enim est *potestatem* aliquam instituere; aliud *personam* qui eam potestatem exerceat eligere: nec *aliud* solum, sed et (plerumque) *alterius.* *Prætor urbanus* istius villæ ab oppidanis et comburgensibus suis quotannis *eligitur:* electus, *jurisdictionem* quandam exercet, quam nisi sic *electus* fuisset non licuisset ei exercere, infra pomæria istius urbis. Penes *Collegiorum* etiam *Socios,* quoties præfecturam vacare contigerit, jus est *eligendi Præfectum;* ad quem sic electum et virtute dictæ electionis, spectat totius *Collegii regimen.* Eligentium utrobique jus universum in sola *personæ designatione* versatur, quæ *potestatem* muneri suo competentem non ab *eligentibus* derivatam, sed aliunde sibi concessam, exerceat. Neque enim *Prætor jurisdictionem* quam in urbe exercet *concivibus* suis qui ipsum ad gerendum magistratum elegerunt acceptam fert; sed *chartæ Regiæ,* qui pro suo beneplacito indulsit urbi tale privilegium: nec *Collegii præfectus* quam obtinet in Collegio auctoritatem accepit a *sociis* quorum suffragiis *electus* est, sed a fundatore ejusque statutis, qui istam ei auctoritatem concessit. In summa, ubi *principis electio a populo* aut legibus aut moribus recepta est, ibi populus *personam regentis* designat quidem, ast Deus unus confert *regendi auctoritatem.*

XXI. Sed donemus istis vulgi palponibus (ut eorum importunitati tantisper gratificemur) suam hanc *hypothesin:* nec hilum promoverint tamen, nisi et illud insuper largiamur,

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The citizens elect the Mayor, but they do not define or determine his jurisdiction. The Fellows of a College elect the Head of the College, who thus receives the power of governing the College. But the Mayor's jurisdiction depends on the Charter; the Head's authority depends on the Statutes given by the Founder. And so, when the election of the Prince is, by law or custom, made by the People, they designate the person of the Ruler, but God gives him his power.

21. But, granting that the People did give to the Governors their power, it does not in the least follow that they can take it back again when they think proper. The whole force of Rules of Right points the opposite way. A bargain once contracted cannot be rescinded.

quod cum solide probare debuissent, sumere maluerunt; quisquis alteri contulerit potestatem, ei jus esse *collatam potestatem,* ubi ipsi visum fuerit opportunum, eidem *adimere,* et in manum suam *resumere.* Contra stat ratio, et omnia jura, omnia fora reclamant. Scilicet, *Legitima pacta* non esse rescindenda; *Donationem* absolute nec interposita conditione factam non posse *revocari,* vel in totum vel ex parte; *Jus* quod ante electionem plenum fuit in *eligentibus, electione* jam peracta ipso facto [p] transire in *personam electam:* aliaque in eandem rem plurima naturæ sunt et rationis toto orbe receptissima dictata, et omnium gentium consensu, ut ex usu quotidiano satis constat, firmata et comprobata. *Septem Germaniæ Principes eligendi* Imperatorem plenam habent potestatem: *electum* autem imperio submovendi, nullam. Singulorum *Angliæ Comitatuum* et *Burgorum* communitas plebis, hoc est, incolæ et *liberi homines* (ut nostrates loquuntur) quotquot sunt infra majoris nobilitatis gradum, *Equites* et *Burgenses,* communibus suffragiis *eligendi jus* habent, quos ad *Comitia Parliamentaria* velut legatos suo nomine mittant cum *fiduciaria potestate* de publicis regni negotiis ipsorum vice tractandi: ast abrogandi inposterum jam *electis* demandatam semel potestatem, etiamsi forte votis *eligentium* parum responderint, nullum jus habent. Eadem ratio est eorum, penes quos *Prætorem urbanum, Collegii præfectum,* aut alterius ejusmodi communitatis aut corporis civilis *caput*

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[p] *Populus in eum omne suum imperium et potestatem transtulit.*—Ulpian. ff. de Constitut. Princip. [Instit. Lib. I.]

A donation made without condition cannot be recalled. The Right which was at first in the Electors, after the election passes into the person elected.

And this is exemplified in many cases. The seven German Electors who have the power to elect the Emperor, when he is once elected, have no power of removing him. The Freemen of the Counties and Boroughs of England choose the Members of Parliament, the Knights of the Shire and Burgesses; but they have no power of abrogating the power of the persons elected, although they do not conform to the wishes of the electors. The same is the case as to the election of a Mayor, or the Master of a College, or the Head of any other civil body: when the election is once made, they have done all that belongs to their place; their right and authority passes into the person elected, he presides over them; and even if he shews himself unworthy of the office, they can only find fault with themselves.

eligendi jus est: qui peracta *electione*, non habent ultra quod agant, jure nimirum et auctoritate præsidendi *in personam electam* translatis, cujus potestati deinceps subesse tenentur, et in *electione* quam ipsi fecerunt acquiescere; nec, si *electus* indignum se Magistratu præbuerit, aliis id quam sibimetipsis imputare.

XXII. Potuerunt ista, fateor, longius porrigi: et quidem dignum esset opera pretium, liberius excurrere in istam probationem, et tam noxiæ ac in seditionem pullulantis radicis fibras omnes ex animis hominum penitus evellere, nisi me temporis et instituti mei ratio, eo unde egressus sum, revocaret. Nec fortassis multum opus est hac in re longiori excursu; cum et ex his quæ jam dicta sunt satis constare posse arbitrer, quam temere simul et periculose hæc tam vasta populo *potestas* attribuatur; et aliæ suppetant idoneæ rationes, quæ ut in ferendis legibus *populi* etiam *consensus*
1 accedat et approbatio, vehementer persuadeant. *Primo*, quia
Lex debet esse [q] νοῦς ἄνευ ὀρέξεως, *Mens cupiditatis expers:*
jussa autem *Principum*, in aulicorum et adulatorum gratiam
temere et inconsultis subditis emissa, sunt fere μετ' ὀρέξεως,
2 pravis nempe impotentium *affectuum* cupidinibus vitiata. *Se-*
cundo, quia *Leges* illæ, quæ cum proponuntur subditis, non
probantur, *moraliter loquendo* presumuntur esse aut *injustæ*
in se, aut subditis *onerosæ* nimis, aut saltem *inutiles* bono
publico; et proinde ejusmodi, ut expediat eas non sanciri,
quum sit Reipublicæ valde incommodum, multiplicari *Leges*
3 sine necessitate. *Tertio*, quia *Leges* jam legitime constitutas

[q] Aristot. Politic. Lib. III. [cap. xi. Sect. 4, ed. Stahr.]

22. We are considering why the consent of the People is necessary to the validity of Laws, (Sect. 14); and we reject, on the grounds now assigned, the doctrine that this is so, because Princes derive their power from the People. We shall now give other reasons for this necessity.

First: Because Law ought to be intelligence without passion; but the commands of Princes, given to gratify courtiers, without consulting the subjects, are often depraved by passions.

Secondly: Because those Laws which, when proposed to the subjects, are not approved, are morally speaking, presumed to be either unjust, or too burthensome, or at least useless; and therefore, ought not to be sanctioned.

Thirdly: Because Laws, legitimately established, may be abrogated by contrary custom, so as to lose their obligation by disuse; and this

ita abrogari posse constat per *contrariam consuetudinem*, ut ultra obligare desinant: quæ *consuetudo* nihil aliud est quam conjuncta *populi consensio* eam legem ut inutilem observare negligentis, et *consensio principis* observationem ejus non exigentis. Ergo quum sit ejusdem potestatis *construere* et *destruere*, videtur *legum vis* ex approbatione et *consensu populi* non minimum pendere. *Quarto* et præcipue, quia hoc 4
ipsum (scilicet ut ad Leges condendas concurrat una cum *Principis potestate consensus* etiam *populi*) et ad publicam totius *regni* pacem, et ad salutem securitatemque *Principis* in tantum conducit, ut nihil magis. Omnino enim verisimile est *subditos* universos, *Regibus* qui ipsorum consensum expectaverint, et *Legibus* in quas ipsi consenserint, prompte et alacriter, nec gravate parituros. Neque vero imminutum iri isthoc pacto supremam *Principis* νομοθετικὴν *potestatem* (quod unum objici ex adversa parte solet) verendum est. Posse enim duo hæc, (*populi* inquam *consensum* et *supremam Principis* in ferendis Legibus *potestatem*) simul et amice satis consistere, (præterea quod in rebus ipsis nulla videtur esse repugnantia,) vel inde constare potest; quod *Angliæ* nostræ *Reges*, quorum *supremam potestatem* ante infelicissima hæc tempora omnes hujus Regni incolæ prolixissime semper agnoverunt, nunquam tamen *legislativam* suam

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is nothing else but the consent of the People disregarding the Law, joined with the consent of the Prince not insisting upon the Law: and thus, since it belongs to the same power to construct and to destroy, the validity of the Law must also depend on the consent of the People.

Fourthly, and principally: Because the rule, that the consent of the People should concur with the power of the Prince in making Laws, is in the highest degree conducive to the peace and wellbeing of the state, and the security of the Prince. It is likely that subjects will obey with alacrity Kings who have waited for their consent, and Laws which have received their consent.

Nor does this condition impair the power of the Prince. That the consent of the People and the Sovereignty of the Prince may concur harmoniously in the making of Law, appears by the example of England; for the sovereignty of the Kings of England was never questioned till these late unhappy times, but yet they never exercised their legislative power without consent of the People.

[The assumption on which the Third Reason is founded, that Laws may become obsolete by disuse, obtains among the Jurists of several countries, but is not accepted by the English Lawyers.]

potestatem ita exercuerint, ut sine *subditorum* suorum *consensu* leges aliquas ipsis imposuerint.

XXIII. Concedendum ergo putamus, ad *condendas leges* quæ subditos obligent in conscientia, requiri aliquem saltem [r]*populi consensum.* Sed porro dubitari potest non immerito, estoque igitur hoc DUBIUM TERTIUM, *qualis quantusque* populi consensus requiratur ad hoc, ut *Principis placitum* habeat vigorem *legis.* Respondeo, considerari posse in isto de quo nunc agimus *populi consensu* duo hæc; Consentiendi scilicet et *Tempus*, et *Modum:* et horum rursus utrumque bifariam. Vel enim consentitur in legem, quoad *Tempus; ante* ejus promulgationem rogationemve, vel *post:* quoad *Modum;* consensu expresso, sive *suffragiis;* vel consensu tacito, sive *moribus.* Ex horum complexione, *quatuor* oriuntur *popularis consensus* modi sive *gradus.*

XXIV. *Primus*, isque omnium minimus et infimus, *gradus* est, *consensus tacitus ante rogationem Legis:* cum scilicet populis aliquis se suaque omnia sic in *victoris potestate* posuit, aut longa parendi consuetudine ita in integrum permisit *Principis arbitrio*, ut quicquid is statuerit, id ipsis ratum esse debeat. Utrovis enim modo id contingat, tantundem est: siquidem *ex jure gentium*, justa est illa *Principis potestas*, quæ aut *justo bello* parta est, aut *diuturna possessione* quasi quodam præscriptionis jure confirmata. Et iste quidem *gradus*, etsi populo non multum sit profuturus, si *Principi* libuerit potestate sua in *tyrannidem* abuti: sufficit tamen ad hoc, ne queri possit *populus* sibi factam injuriam,

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[r] ὁ γὰρ νόμος ὁμολογία τίς ἐστιν.— Aristot. Polit. Lib. I. 6, [cap. ii. Sect. 16, ed. Stahr.]

23. The THIRD DOUBT is, What sort and what amount of consent on the part of the People is requisite, in order that the Will of the Prince may have the force of Law.

We may consider in this, two points, the *Time* and the *Manner* of this consent: the *Time*, as to whether the consent is to be before or after the passing of the Law: the *Manner*, as to whether the consent is given expressly, by votes, or tacitly, by custom. And thus there are four Degrees of Popular Consent.

24. The First and lowest Degree of Popular Consent is *tacit* consent *before* the passing of the Law. This occurs when a People has put itself entirely in the hands of a conqueror, or has, by long custom, become entirely subject to the arbitrary will of the Prince. By the Law of Nations, both these conditions, just war and long prescription, give just authority. And this degree of popular consent,

si *Principem* gravius aliquid in ipsos, (quod forte non sit injustum, sed quod ipsi tamen nollent,) statuere contigerit. Quemadmodum apud nos, importune (ut solent) et inique e *Presbyterianorum* grege nonnulli conqueruntur, *pastorum parochialium electionem* populo injuste ereptam; cum quos oporteret a *parochianis* ad id munus vocari, a privata aliqua singulari *persona*, aut *collegio*, sub *patroni* nomine sine ipsorum consensu præsententur. Illud interim parum cogitantes, *eligendi jus* si quod *populus* olim habuerit, (quæ tamen incerta res est, et quam si negetur nunquam probare poterunt) ex justa certe aliqua causa ab initio, sed longi temporis præscriptione jam ignorata, ad *beneficiorum patronos* quos vocant jamdudum transiisse, adeoque in facta a *Patronis* electione involvi *virtualiter* et contineri *populi consensum*. Quod si homines dogmatum suorum nimium pertinaces non permoveat; ast illud saltem submonendi sunt, quod vel importunissimo adversario faciat satis, *jura Patronatus*, et *Ecclesiarum advocationes* auctoritate *Parliamentaria*, hoc est, communi et pleno totius *populi consensu*, dudum sancita esse; et proinde quod a legitimo *Patrono* hoc in casu sit, *populum* ut id ei facere liceret *consensisse*.

XXV. *Secundus gradus* est, *tacitus populi consensus* in legem, *post ejus promulgationem*. Cum scilicet [s] populus *Legi*

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[s] *Leges constituuntur cum promulgantur, firmantur cum moribus utentium approbantur.*—Julianus, Distinct. IV. Sect. In istis.

though it is not much protection against tyranny, is a bar to complaint of wrong done, even when the Law is burthensome.

And thus the Presbyterians have no just ground, in their complaints that the election of parish Pastors has been taken from the People, and given to other *Patrons*, private persons or Colleges. For if this right of choice ever belonged to the People, (which is doubtful,) it must have been taken away from them for some good cause, now forgotten in the course of a long prescription, and transferred to the Patrons: and thus the Patron's choice virtually involves the People's consent.

And if men are not satisfied with this, they ought to recollect that the rights of Patrons and the Advowsons of Livings have long been sanctioned by the authority of Parliament, that is, by the full and complete consent of the People. And thus, the People has consented to what the Patrons do.

[This virtual consent of the People, which is of no effect except to silence their complaints, is little better than a verbal evasion. The defence of Advowsons of Livings rests on other grounds.]

a Principe latæ et promulgatæ non contradicit, sed eam potius *moribus* et *factis* comprobat; conformando se voluntati *Principis*, et id observando, quod *Lege* imperatum est. Si enim qui *vel tacet* duntaxat, *consentire* videatur, multo magis *consentire* præsumitur qui et *facit*. De quo consentiendi gradu sic iterum *Julianus*, ubi supra; *Quid interest* (inquit) *suffragio populus voluntatem suam declaret, an rebus et facto?*

XXVI. *Tertius gradus* est, *expressus Populi consensus* in legem a Principe rogatam et sibi propositam, *post factam rogationem*, Cum scilicet *Princeps* Legis materiam domi ante præparatam, et ex consilio virorum prudentium, si non perfecte expolitam, aliquatenus tamen exasciatam, et *in concepta verba* quædam redactam, nequid quod palam esset absurdum aut incommodum contineret, subditis suis ulterius examinandam et expendendam permittit: postulans, ut ipsi aut pleraque ipsorum pars eandem si futuram putent *Reipublicæ* salutarem, aut saltem *bono publico* nihil incommodaturam, suffragiis suis confirment, ut ipsis etiam consentientibus abeat in *Legem*. Qui fere fuit apud *Romanos* olim, stante adhuc Republica *rogandarum Legum* mos: unde et *Rogandi* vox obtinuit, cujus apud *Romanarum rerum* scriptores frequentissima mentio est.

XXVII. Ultimus et *supremus gradus*, (quæ est ipsissima illa *populi libertas*, qua tandiu sub optimis *Regibus* ad invidiam usque felices suimus *Britanni*, et nisi stupide ingrati nimium nos indignos præstitissemus tanta felicitate, adhuc felicissimis esse licuisset,) est *consensus expressus ante rogationem*

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25. The Second Degree of Popular Consent is the *tacit* consent of the People to a Law *after* its promulgation. When the People conforms to the Law, it consents to it. Even he who is silent is held to consent, much more he who does what is commanded. "It matters not," says the Roman Jurist, "whether the People declare its will by its votes or by its acts."

26. The Third Degree of Popular Consent is the *express* consent of the People *after* a Law is proposed. This is the case when the Prince draws up the Law, and proposes it to the People, asking for it to be confirmed by a majority of their voices. This was the practice in the Roman Commonwealth; and hence, the phrase for proposing a Law, was *asking* a Law.

27. The Highest Degree of Popular Consent is the express consent of the People *before* the Law is passed. This is real liberty of the People; and this we enjoyed under our kings, till we shewed ourselves

legis. Cum scilicet *Legis formula perscripta* habita prius inter ipsos justa et de *rebus* et de *verbis* deliberatione, *Procerum* regni et *delegatorum plebis* conjunctis suffragiis comprobata, *Regiæ* tandem *Majestati*, cui uni competit *Legum ferendarum summa potestas*, exhibetur, ut ipsius calculo, si id ipsi commodum visum fuerit, confirmata, *Legis* exinde habeat *vigorem*, alias irrita sit penitus, nec pro Lege habeatur. Quæ *Legum sanciendarum* ratio a Majoribus nostris prudentissime excogitata, et ad nostra usque secula per tot Regum et annorum series traducta, omnium retriorum ætatum experientia usuque comperta est adeo *Reipublicæ* salutaris: ut si de movendis loco suo veteribus terminis non essent intempestive satis (nequid durius dicam) capi cœpta consilia, floruissent adhuc fortassis, ut Dei olim beneficio, quæ nunc justissimo ipsius judicio pessum ierunt, euntque magis magisque indies *Ecclesiæ, Academiæ, Rex, Populus, Respublica, Res* cujusque *privatæ.* Quandoquidem non posse arbitror humano ingenio facile excogitari, ad moderandam hinc *Regum potentiam*, illinc *licentiam populi* continendam coercendamque, *Legum ferendarum* ratio aliqua magis opportuna.

XXVIII. Sequitur DUBIUM QUARTUM de *Legibus minorum Communitatum*; ut exempli gratia, *Civitatum, Academiarum, Collegiorum, Scholarum*, aliarumque quas *Corporatas* vocant *Societates*: quæ præter *Leges* omnibus Regni subditis *communes*, suis etiam *privatis* gaudent *legibus, juribus et statutis*; Ad quas nimirum personas pertineat ejusmodi

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stupidly ungrateful for such felicity. In this case, the Law, duly drawn up, and deliberated upon, both as to matter and words, and approved of by the Peers of the Realm and the Representatives of the People, is offered to the King's Majesty, that, if confirmed by him, it may become Law, but otherwise be of no force whatever.

No better Constitution has ever been devised than that which we thus enjoyed; and if we had not lost it by the recent unseasonable attempts at change, our Churches, Universities, King, People, Commonwealth, Private Fortunes, which are now by the just judgment of God ruined, might still flourish.

28. The FOURTH DOUBT is concerning the Laws of smaller Communities, as Cities, Universities, Colleges, Schools, and other Corporate Societies, which, besides the common Laws of the Land, have their own Laws, Rights, and Statutes.

To what Persons belongs the right of making such Laws? and when made, whom, and how far, do they oblige?

First: All such bodies are members of the general body, and are

legum ferendarum potestas, et latæ quos et quoad *obligent.*
1 Nec est difficilis responsio. Dico ergo *Primo,* Quum omnes hujusmodi *sodalitates, corpora,* sive *collegia minora,* magni sint corporis (hoc est, *Regni* sive *Reipublicæ,*) membra, et in eo contineantur ut *Cœlorum orbes inferiores* in superioribus: non licere cuiquam *Collegio,* societati, eorumve moderatoribus aut inspectoribus, *Leges privatas* in usum suum condere, quæ publicis totius *Regni legibus* adversentur, aut ullo modo præ-
2 judicent. Dico *Secundo,* Quum ex concessione *Principum,* idque ex gratia speciali (ut loquuntur) corporentur istiusmodi *societates,* nec aliis gaudeant *juribus, privilegiis,* vel *potestate,* extra ea quæ vel ex diuturna temporis *præscriptione,* vel ex chartis *diplomatibusque Regiis* constare potest fuisse sibi concessa: *potestatem* proinde quæ in ipsis est νομοθετικὴν omnem *derivatam* esse *potestatem,* non autem *primitivam;* atque in supremam *Regiam potestatem,* ut veram sui *originem,* ultimate resolvi; et propterea non posse ejusmodi *societates* earumve Magistratus pro arbitrio suo constituere, aut *potestatem* aliquam in legibus ferendis actualiter exercere, nisi ad modum et mensuram indultæ sibi *a Principe* facultatis.
3 Dico *Tertio, Leges* a privatis *Collegiis* et *societatibus corporatis* juxta tenorem facultatis sibi a Principi concessæ *legitime latas, obligare* omnia membra earundem *societatum,* et quotquot earum jurisdictioni seu regimini subduntur, eosque solos, *per se, directe* et vi sua: ast virtute supremæ *Majestatis Regiæ,* cujus auctoritate nituntur, et a qua vim suam

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contained in it, as the lower orbs of heaven are contained in the higher, [on the Ptolemaic Hypothesis]. Hence no such Society or its Rulers may make Laws contrary or prejudicial to the public Law of the Land.

Second: The legislative Power which such bodies possess, is a derivative Power, given by long prescription, or by charters and the like, issued by special grace of the Prince; and therefore such bodies can only legislate, as far, and in such manner, as they are thus authorised.

Third: Laws duly made by private Colleges and Societies, according to the tenor of the authority thus given them, oblige the members of the body, and those alone, of themselves and directly: but to a certain degree, and indirectly, they oblige all and every of the subjects of the whole kingdom, in virtue of the Royal Sovereignty on which they depend.

But these two kinds of Obligation are different. These Laws oblige the members diligently to observe them; they oblige other persons only not to violate or impair them, or impede their being observed.

omnem et auctoritatem accipiunt, *obligare* aliquatenus et *indirecte* universos et singulos totius Regni subditos. Sed utriusque *obligationis* nec eadem ratio est, nec gradus idem. *Obligant* enim hæ *leges, suos* quidem, ut eas diligenter *observent: reliquos* vero hactenus tantum *obligant*, ne eas aliquo modo *violent, imminuantve*, aut earum observationem impediant.

XXIX. Dubium quintum, de *Legibus Ecclesiasticis in specie.* Posse de novo condi *Leges* de ritibus, *rebus* et *personis Ecclesiasticis*, omnibusque sacri cultus externi *circumstantiis* ad ordinem, honestatem et ædificationem spectantibus, extra eas quæ sunt a Christo et ejus Apostolis in sacris literis traditæ; adeo manifesta res est et rationi consentanea, ut perversi judicii obstinatique animi se suspicione ægre liberaverit, qui siccus et sobrius negaverit. Sed cujus sit *Ecclesiasticas Leges* condere, ex quo in diversa studia abiere
Theologi, parum inter partes convenit. *Pontificii*, qui clericos 1
ab omni *civilis Magistratus* jurisdictione *exemptos* volunt, (de qua controversia non est nunc disputandi locus,) *Episcopis* solis, inque eis summo *Pontifici* maxime, quem *Œcumenicum Episcopum* prædicant, hoc juris asserunt, ut ipsis *Leges* condere liceat, quæ non *Clericorum* modo sed et *Laicorum* conscientias obligent, etiam sine consensu vel licentia *Magistratus*
Politici. *Papismi* hunc articulum, ut et alios non paucos, 2
(mutata tantum *persona, dogmate* non mutato,) amplectuntur, qui se tamen *Papismi* acerrimos hostes profitentur, sed omnia interim novi interturbant Davi, *Disciplinarii* nostri *Reformatores:* qui omnem potestatem, auctoritatem, *Jurisdictionemque Ecclesiasticam* Regibus ademptam, sibi unis suisque

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29. The Fifth Doubt is concerning Ecclesiastical Laws in particular. It is evident that new Laws concerning Things and Persons Ecclesiastical, and the circumstances of external Worship, tending to decency and edification, may be made, in addition to those which are delivered by Christ and his Apostles in the Scriptures. The question is, Who are to make Ecclesiastical Laws?

1. *The Papists* say, the Bishops alone, and especially the Œcumenical Bishop, the Pope, can, without the consent or licence of the Civil Magistrate, make Laws which bind not only Clergy but Laity.

2. *The Puritans*, in this as in other cases, adopting the dogmas of the Papacy, and changing only the persons, claim all Ecclesiastical jurisdiction for their Classes and Conventions.

3. *The Erastians* take all Ecclesiastical jurisdiction from the

3 *classibus* et *conventibus* vindicant. *Erastiani* ex adverso, *Reformatores* quoque non minus et hi (Deus bone! sub specie *Reformationis* quot nominum et opinionum monstra, nisi quod sunt *deformia* pariter, alias immane quantum invicem *difformia*, parturivit, peperit, aluit, fovit prodigiorum ferax *novissimum hoc septennium!*) *Erastiani* inquam, *clericis* omni *jurisdictione Ecclesiastica* penitus exutis, *externi Ecclesiæ regiminis* jus universum *Magistratui civili* ex asse et in solidum attribuunt.

XXX. Non est mihi animus, sed nec otium, (nisi vobis plus æquo molestus esse vellem) cum utriusvis generis adversario manum conserere. Hic, ut aliis plerisque in rebus usuvenit, *verior* esse videtur, et est certe *tutior*, quæ inter duas extremas *media* interjacit *sententia:* in quam vestris omnium pedibus eo lubentius itum iri confido, quod et doctrinæ *Ecclesiæ Anglicanæ*, et *Regni* insimul *Legibus* maxime sit consentanea. Nempe, *jus* condendi *Leges Ecclesiasticas* esse penes *Episcopos, Presbyteros*, aliasque personas a totius Regni Clero rite electas, et in *legitima Synodo* rite congregatas. Ita tamen ut ejus juris sive *potestatis exercitium* in omni Republica Christiana, ex auctoritate supremi *Magistratus Politici* pendere debeat. Idque et *a parte ante*, (ut loqui solemus) et *a parte post:* Videlicet, ut nec eis statuendi *Canones Ecclesiasticos* causa liceat convenire, nisi aut ipsius

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Clergy, and deliver to the Civil Magistrate the whole external government of the Church.

Both these latter parties call themselves *Reformers*. And good God! cries Sanderson, what monstrosities of names and opinions has this last seven years, so fertile in prodigies, conceived, bred, born, and brought up! marvellous for their agreement in deformity; marvellous for their *difformity* in everything else.

30. In this, as in other things, the *Anglican Church* takes a middle way, and one conformable to the Laws of the Realm: namely, that the right of making Laws Ecclesiastical belongs to the Bishops, Presbyters, and other persons, duly elected by the whole clergy of the Realm, and duly assembled in legitimate Synod. With this condition, that, in every Christian state, the exercise of this power should depend upon the authority of the supreme Political Magistrate. And this dependence is of two kinds:

1. Antecedent; that the Clergy cannot meet to make Ecclesiastical Canons, except as authorised by the Magistrate: and

2. Subsequent; that the Canons so passed shall not be of force without the assent of the Magistrate.

mandato et jussu ad id negotii convocatis, aut ejus saltem auctoritate, venia ab eo petita pariter et obtenta, munitis; nec *Canones,* in quos illi sic convocati munitique consenserint, rati sint, aut vim aliquam habeant *obligandi,* quoad supremi Magistratus assensus accedat, cujus approbatione et publica auctoritate simulac confirmati fuerint, illico pro *Legibus* habendi sunt, et *subditos obligant.* Atque hæc de *Causa Efficiente* dicta sufficiant.

PRÆLECTIO OCTAVA.

DE LEGUM HUMANARUM OBLIGATIONE EX PARTE *CAUSÆ FORMALIS:* UBI DE PROMULGATIONE LEGUM, LEGIBUS PŒNALIBUS.

EZR. X. 7, 8.

Ita promulgarunt per Judah et Jerusalem omnibus filiis captivitatis, ut se congregarent Jerosolymis, et quisquis non veniret infra triduum...sub anathemate ut essent omnes facultates ejus.

I. DE *Legum humanarum Obligatione*, quod ad earum *Causas Materialem* et *Efficientem* pertinet, in his quæ jam ante nobis tractata sunt, satis pro instituti nostri ratione vidimus. Dicendum proxime de his, quæ ad *Causæ genus Formale*, (etsi fortassis non admodum proprie, siquis velit ista ad accuratam methodi normam exigere, haud tamen prorsus incommode, ut mihi saltem videtur,) reduci possunt. Quæ omnia, ad duo omnino capita revocare licet: alterum de *Legum Promulgatione*; de adjuncta eis *pœna* delinquentibus irroganda alterum. Quarum utraque ut in proposito *Textu* expresse continetur, *Promulgatio* versu septimo, *Pœna* versu octavo: ita est utriusque, et ex ipsa *Legis* natura, et ad *effectum legis* consequendum, usus pernecessarius. Quum enim *Lex*, ex natura sua, et quatenus est *regula* quædam rerum agendarum, *duplicem* habere debeat *vim;* vim scilicet *dirigendi*, ostendendo subditis quid sit *faciendum* vel *non faciendum*, et vim *obligandi*, ingerendo animis eorum parendi

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1. The Obligation of Human Laws as depending upon the *Material* Cause and the *Efficient* Cause having been considered, we must now speak of what we may (though not very accurately) refer to the *Formal* Cause; namely, certain points concerning the Form of legislation; the Promulgation, and the Penalty. For as a Law by its nature, and as being a Rule of Action, must have a twofold force, to direct, and to oblige; in order that the Law may have this force, the subject must both know the Will of the Lawgiver, by its Promulgation; and must understand, from the Penalty, the necessity of obeying.

necessitatem: non poterit *Lex* duplicem hanc *vim* debite et cum effectu exerere, nisi et subdito innotescat, quæ sit *Principis voluntas,* quod fit *Promulgatione;* et intelligat etiam ex apposita *pœna,* quantum sua refert eam præstare.

II. De *Promulgatione* Legis, DUBIUM PRIMUM est, *An Promulgatio sit de ratione Legis;* quod est quærere, An ad hoc ut *lex* habeat vim *dirigendi* et *obligandi,* ita necessario requiratur ejus *Promulgatio,* ut ea vi careat nisi promulgata sit? *Promulgationem* autem in tota hac tractatione non intelligo, quoad usum ejus vocabuli apud *Ciceronem* et alios *Romanos scriptores,* sed juxta receptum morem loquendi *Scholasticorum* et *Canonistarum* posteriorum seculorum. Illa enim veterum *promulgatione,* proponebatur publice *tribus nundinis* lex adhuc ferenda, ut populo probaretur: ut hæc de qua nunc loquimur *promulgatio* est ipsa *publicatio Legis jam latæ,* ut populo innotescat. Ad dubium ergo propositum respondeo breviter, *Promulgationem* ita esse de ratione *Legis,* ut aliquo modo dici possit ejus *Forma,* adeoque apud plerosque auctores ingrediatur ejus definitionem: et proinde simpliciter esse necessariam ad hoc, ut *Lex* exerceat *officium Legis,* quod est, *dirigere* et *obligare* subditos; quos ne *dirigere* quidem potest, multo autem minus *obligare,* quantumcunque sit justa et optima auctoritate lata, nisi sit illis *cognita,* et cognita esse non potest nisi *promulgetur.* Illud enim quod proprie inducit obligationem, est [a]*voluntas* et auctoritas præsidentis sive *principis,* non ut est *persona singularis,* sed quatenus sustinet *personam publicam* et est caput communitatis. Atqui nisi suam illam voluntatem publica aliqua ratione populo patefieri et proponi curaverit, non poterit de aliqua *Lege* (juris saltem

[a] [Conf. Præl. VII. Sect. 8.]

2. The FIRST DOUBT concerning the Promulgation of a Law, is Whether Promulgation be an essential part of a Law.

We do not here understand *Promulgation* as in Cicero and the Roman writers, where it means the publication of a proposed Law *before* it was made a Law; but in the later sense, of the publication of a Law already made.

To the Doubt, we reply, that Promulgation is an essential part of a Law; it may be called the *Form* of the Law, and is by some writers made part of the definition of Law. It is necessary, in order that the Law may discharge its office of directing and obliging the subject. It cannot direct, much less oblige, if it be not known; and cannot be known, if not promulgated. What imposes an Obligation is, the Will of

interpretatione) certo constare, quod sit ipsius *voluntas*, et ab ejus auctoritate prout *publicam personam* sustinet profecta. Hinc illud juris Canonici, [b] *Leges constituuntur, cum promulgantur:* itemque illud alterum juris civilis effatum, *Leges quæ constringunt hominum vitas, intelligi ab omnibus debent.* Quod quum omnium Doctorum communi consensu, ratione scilicet sic dictante, comprobetur: nihil opus est ei firmando aut *Dei* ipsius exemplum in medium adducere, *Legem* suam populo Hebræo de monte *Sinai* solenniter *promulgantis;* aut florentissimarum toto orbe *Rerumpublicarum* et *civitatum* praxin, quæ *Leges* suas mox ut latæ fuerunt, *tabulis æneis* incisas, aut insculptas *ligneis*, in locis maxime publicis, civibus inspiciendas proposuerunt. Notissima sunt illa vocabula quæ passim apud auctores occurrunt, et ad hanc classem pertinent, *Atheniensium* δέλτοι, κύρβεις, ἄξονες, XII Tabulæ Romanorum, aliorumque populorum alia: de quibus consulant, queis vacat esse istarum rerum curiosis, utriusque linguæ Lexicographos et Philologos. Nobis ad alia pergendum.

III. Posita promulgandæ legis *necessitate*, exoritur DUBIUM SECUNDUM, *qualis* debeat esse *promulgatio legis*, ut legitima censeatur, et inducat *obligationem?* Pro responsione dico *primo*, *promulgandi* legem modum et rationem, quoad particulares *ritus* et *circumstantias*, pro more cujusque gentis variari posse; in eo tamen consentire omnes, ex communi usu requiri, ut *legislator* voluntatem suam curet ita proponi et manifestari subditis *externo* aliquo *signo*, ut eis publice innotescat, nec aliquis eorum qui tenentur legem observare, possit (*moraliter loquendo*) esse ignarus ejusmodi legem esse latam. Atque hoc propterea requiritur, quod *dirigendi* vis legi intrin-

[b] Distinct. 4. Sect. In istis.

the Governor, not as being an individual, but as a Public Person and the Head of the Community. And except this his Will be made known in some public manner, it cannot be known (according to legal interpretation) that it is his Will as a public person.

And this is the doctrine of Jurists; confirmed by the example of the Law delivered from Sinai, of the Athenians, and the Romans.

3. The SECOND DOUBT is, Of what kind must the Promulgation of a Law be that it may be legitimate, and may induce an Obligation.

We reply, *First*, The mode may vary, in rites and circumstances, according to the customs of different nations; but all agree in this, that the legislator must express his Will by some external sign.

seca est et essentialis: non autem possunt *subditi* actiones suas secundum Principis sui voluntatem *dirigere,* nisi cognoscant hanc esse ejus *voluntatem;* nec id scire possunt, nisi sit ipsis *externo* aliquo *signo* (puta voce, scripto, sculptura, similive alio) sufficienter *proposita* et manifestata.

IV. *Dico secundo,* ad *promulgationem legis* ita ut obliget subditos non sufficere quod *Legislator* voluntatem suam eis publice significet; sed ulterius etiam requiri, ut solenni aliquo adhibito *ritu* id fiat: aut saltem ita fiat (quod *solennis ritus* instar habet, et tantundem valet) ut satis testatum sit subditis *Legislatorem* intendere, ut illa ipsius voluntas *vigorem legis* habeat, et eos *obliget.* Cujus ratio est, quia non omnis *voluntas superioris,* etsi subdito cognita, continuo et ipso facto eum *obligat;* nisi etiam constet *superiorem intendisse* ut obligaret. Omnis enim *superior* Legislativa potestate præditus, quum *duplicem* sustineat *personam;* unam privatam qua *homo singularis,* alteram publicam qua *legitimus superior:* potest idcirco duplicem subire considerationem sive respectum. Peperit nobis haud ita pridem inter medias turbas inauspicata quorundam solertia *novam distinctionem,* de Regis nempe *capacitate* (sic enim loqui placuit) *personali, et politica;* præsenti negotio (meo saltem judicio) quam ei rei quæ tunc agebatur, aliquanto commodiorem. Nimirum sic est: *Voluntas Principis,* si consideretur princeps *in capacitate sua personali,* hoc est, ut *persona singularis* et quasi privata, non habet rationem *legis,* nec obligat *subditos* ut secundum eam *dirigant* actiones suas. Ergo ad *obligandum subditos* non satis est, ut *Princeps* quocunque modo eis significet hoc vel illud se *velle:* nisi etiam alicunde constare

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4. *Secondly,* This must be done in some solemn and appointed manner. For it is not the mere Will of the Legislator as a private person, but as a public person, which obliges the subjects.

We have heard much of late, Sanderson says, of the distinction between the King's personal capacity and his political capacity. This distinction is of more suitable application for our present purpose, than in the cases to which it has been applied. Namely, the Will of the Prince in his private capacity does not oblige the subjects, but only his Will in his political capacity, in so far as he is the Head of the Community, and invested with legislative power. And therefore the mere signification of his Will is not enough; there must be some public and solemn ceremony of promulgating Laws: that men may not excuse their disobedience by saying, I had not thought of it.

poterit, eum idipsum velle ut *in capacitate sua Politica;* hoc est, quatenus *Princeps* est, et caput communitatis, et ut *personam publicam* sustinet cum *Legislativa potestate.* Quod quum ex simplici *voluntatis* suæ significatione satis constare non potest, opus est ut aliqua magis publica et *solenni ceremonia* iis quorum id scire interest testatum sit: nequis possit excusandæ suæ *inobedientiæ,* putidum illud et vulgare, *Non putaram*, obtendere.

V. Dico *tertio,* in amplioribus imperiis, quæ multas continent *provincias,* utile saltem esse ut *promulgatio* novæ legis fiat in singulis imperii *provinciis.* Sunt quibus hoc videtur simpliciter necessarium, et requiri ex natura *legis,* quæ non obligat nisi a *populo* acceptetur: et proinde si *lex* in *curia* Principis, aut totius Regni *Metropoli,* aut primariis aliquot *civitatibus* solum promulgetur, non sufficere ejusmodi *promulgationem* ad obligandum eos, qui in locis et provinciis remotioribus degunt. Sed utut non sit hoc simpliciter necessarium, (nec videtur enim natura *legis* id requirere, et ex altera parte stat cum *communis opinio* Doctorum, tum *communis* plerarumque gentium *praxis*) utile tamen est id fieri, ut *Lex,* qua *singuli* tenentur, ad *singulorum,* quoad fieri potest, notitiam perveniat. Quod quanto facilius nostro seculo, quam prioribus illis (nondum adinventa *arte typographica*) præstari potest, tanto inexcusabilius negligitur. Ne longe abeam; quæ est apud nos usu recepta, non modo sufficiens, sed et facillima videtur esse *legis promulgandæ* et commodissima simul ratio: ut scilicet *leges in Comitiis Parlamentariis* totius Regni Ordinum consensu a *Rege sancitæ,* finitis jam *Comitiis* mox typis mandentur, idque a *typographo Regio* et *noto charactere,* ita ut nemo possit esse dubius, leges eas et legitime *latas* esse, et sufficienter *promulgatas.*

VI. Dubium tertium. Supposito quod lex fuerit sufficienter *promulgata, quando incipiat obligare* subditos: an

5. *Thirdly:* It is desirable that the Law should be promulgated in the provinces of the empire, as well as in the metropolis. But this is not held necessary by Jurists, nor by the practice of nations. It may easily be done now by printing.

Our English mode of promulgation is sufficient, and easy. Laws agreed upon in Parliament, and having received there the Royal Assent, are, at the end of the Session, printed by the King's printer; so that no one can doubt that they are duly made and promulgated.

statim post *promulgationem* factam? An post aliquod temporis intervallum? Pro responsione dico *primo,* quod et extra 1
controversiam est, *leges* illas, in quibus definitum est certum *tempus obligationis,* quamprimum illud tempus advenerit, *statim obligare* incipere, et obligare deinceps in omne tempus futurum, nisi aut *terminus obligationis* ipsis illis legibus definiatur, aut ipsæ leges vel nova *lege* vel contraria *consuetudine* abrogentur. Unde ex communi juris civilis sententia *leges Imperatoriæ* de novo constitutæ non obligant Imperii subditos, nisi post *duos menses* a promulgatione facta: quia id tempus *Authentica quadam in Novellis,* ut in omnibus legibus observandum, universaliter definitum est, idque eo consilio, quod præsumitur facillime posse *duorum mensium* spatio notitiam legis ad omnes subditos pervenire. Dico *secundo,* in regnis 2
et Rebuspublicis, ubi nihil certi de *tempore* quo leges de novo latæ incipiant obligare aut *jure* definitum est, aut *moribus* receptum, *leges* in quibus non apponitur certum tempus obligationis, obligare in conscientia, quamprimum sunt pro consueto regionis more *promulgatæ,* omnes illos ad quorum notitiam pervenerint, aut quibus per *legislatorem* non steterit, quo minus innotescere potuerint. Quum enim *obligatio legis* ex voluntate *legislatoris* pendeat, non ex scientia *subditi:* sequitur vigere *obligationem legis,* quando legislator voluntatem suam *subditis externo signo* sufficienter expresserit, sive id singulis *subditis* cognitum fuerit, sive contigerit ut aliqui forte idipsum ignorent. Posita siquidem *lege,* ponitur *obligatio;* quæ convenit legi quatenus lex est, et eam necessario sequitur, sicut omnis necessarius *effectus* sequitur propriam suam *causam,* ut a nobis sæpe ante dictum est. Ergo quum *legi,* quamprimum *legitime*

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6. THIRD DOUBT: The Law being promulgated, when does it begin to oblige the subject?

First; Those Laws which specify a time at which they come into action oblige from that time; and continue to oblige for ever, except the time of their obligation is defined by the Law itself, or they are abrogated by new Laws, or by contrary customs. [On this last point, see *Prœl.* VII. Sect. 25]. In the Imperial Roman Law it was provided, by an express Rule, that new Laws did not oblige the subject till two months after their promulgation: in which time it was presumed they might come to the knowledge of all the subjects of the empire.

Secondly; When no such provision is made, Laws as soon as promulgated in the usual manner, oblige all to whose knowledge they

lata est et *sufficienter promulgata*, nihil ultra desit quod ad complendam ejus essentiam requiratur; omnino consequitur *legem* sic latam et promulgatam *statim* inducere obligationem. Neque inconvenit nasci posse in nobis *obligationem* per voluntatem et factum alterius solum, nobis etiam nescientibus; si *obligatio* illa habeat rationem *debiti moralis*, ut loquuntur: etsi in *obligationibus* et debitis quæ oriuntur *ex contractu*, aliter se res habeat.

VII. Dubium quartum; quatenus *lex* afficiat eos, quibus, postquam *sufficienter promulgata* est, aut post elapsum tempus lege constitutum, *actu* tamen non innotescit? Quod est quærere, an cui *lex actu cognita non est*, aut *culpæ* reus sit, ita ut peccet si contra *legem* faciat, aut *pœnam* propterea mereatur, quam *lex* delinquentibus irrogat? Ratio dubitandi est, ex una parte, quia frustra est *obligatio*, vel potius nulla, quæ nec ad *culpam* obligat, nec ad *pœnam*. Ex altera parte, tum quia absurdum videtur, ut quis *obligetur ad impossibile*, at certe legem servare, quam nescias, *impossibile* est: tum etiam quia e duobus *legis* quæ diximus officiis, necesse est *dirigendi* illam vim, ut natura priorem, alteram illam *obligandi* vim antecedere, ita ut lex nequeat *obligare* nisi quem *dirigit*, *dirigere* autem non potest nisi sit *cognita*. Hoc imprimis supposito, quod nullam admittit dubitationem, subditum cui lex actu cognita est, obligari et *ad culpam* et *ad pœnam*: quod ad *ignorantes legem* attinet, pro responsione ad dubium propositum, *Dico primo*, qui legem ignorat ex *crassa negli-*

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have come, or might have come so far as depended on the legislator. For the obligation is the effect of the Law as Law, and does not depend on the knowledge of each subject.

Nor is the objection valid, that we may thus be brought under an obligation without knowing it: this obligation being a *moral* obligation. In matters of Contract it is different.

7. Fourth Doubt: When the Law, though sufficiently promulgated, is in fact not known to any person, how far does it oblige him? That is; when a person is in fact ignorant of the Law, if he violate it, is he either culpable, or liable to the penalty of the Law?

The difficulty arises from this, that on the one hand, an obligation which, violated, makes a man neither culpable, nor punishable, is frustrated. On the other hand, it is absurd that any one should be under an obligation to what is impossible: and it is impossible to obey a law which you do not know. The former office of a Law, to direct, precedes the latter, to oblige [see Sect. 2]: the Law can

gentia, quum id suo vitio et *lata culpa* contingat ut eam nesciat, nihilo aut saltem non multo minus, et *peccati* reum esse, et *pœnam* mereri, quam eum qui cognitam legem violat. *Ignorantia* enim *crassa* ejus quod quis scire debet et potest, neminem excusat: nec multum distare videntur (juris interpretatione) *dolus malus,* et *lata culpa.*

VIII. Dico *secundo,* eum qui *legem* propterea *ignorat,* quia aliquanto *incuriosior* aut *negligentior* in eam partem fuerit, quam in re tam gravi oportuerat; etsi *culpa,* quam Jurisconsulti *levem* vel etiam *levissimam* dicunt; quia et *culpa* tamen, et *sua,* id factum constat, non prorsus immunem esse a *legis obligatione.* Ratio est, quia, istiusmodi *ignorantia* fuit *vincibilis:* si enim subditus tantam diligentiam adhibuisset, quantam et rei ipsius dignitas postulabat, et adhibere solent in gravioribus suis negotiis homines cauti, potuisset (id enim jam supponimus) certus fuisse de *legis promulgatione. Vincibilis* autem ignorantia ejus *juris,* secundum quod tenetur quisque *dirigere actiones suas,* non potest non esse *culpabilis:* si vero *culpabilis* in quocunque demum gradu, eatenus etiam et *inexcusabilis* est. Quo tamen *levior culpa* est, eo et in

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only oblige those whom it can direct, and can only direct those to whom it is known.

In reply, we say: *First,* He who is ignorant of the Law by gross negligence, is ignorant by his own fault; and is both as culpable and as punishable as those who know the Law. For gross ignorance of what he ought to have known and might have known, excuses no man. [See *Elem. Moral.* Art. 359.]

8. *Secondly;* He who is ignorant of the Law through some want of the care and curiosity concerning such grave things, which men ought to have; although he is culpable only in a slight or very slight degree, yet being culpable, is not free altogether from the obligation of the Law. For his ignorance was not invincible. [*Elem. Moral.* Art. 343.] And vincible ignorance of the Rules by which we ought to direct our actions cannot be otherwise than culpable. But in proportion as he is less culpable, he is more excusable; and his ignorance will be more excused both in the external forum of Law, and the internal forum of Conscience.

But that he was obliged by the Law before he knew it, appears from this; that if he learn from good testimony that such a Law has been promulgated, he forthwith judges himself to be obliged by the Law. Now such mere testimony cannot produce an obligation; therefore he was obliged by the Law before; though he had then neither knowlege of the Law nor conscience of the Obligation.

utroque foro *excusatior* est *ignorantia*, et facilius apud æquos rerum æstimatores *veniam* meretur. At lege antea *obligatum* fuisse, licet eam *ignoraret*, vel exinde patet, quod quamprimum ex testimonio viri alicujus fide digni intelligit *legem promulgatam* esse, se protinus ea *lege obligatum* judicat: at nulla oritur de novo ex illius viri testimonio *obligatio*, (neque aut *testi* ipsi, aut ipsius *testimonio*, vis aliqua inest *obligandi;*) ergo proculdubio jam antea *lege obligabatur*, etsi nec *legis* notitiam ante haberet, nec conscientiam *obligationis*.

IX. Dico *tertio*, eum qui *bona fide* et *invincibiliter*, ex casu aut impedimento aliquo fortuito, nulla tamen sua negligentia, culpave, legem promulgatam *ignorat*, (ut siquis *insania*, aut gravi et diuturno *morbo* laboraverit, aut nuperrime ab exteris regionibus reversus fuerit, nec quicquam de *lege promulgata* aut inaudiverit aut audire potuerit,) nec ad *culpam* nec ad *pœnam* proprie dictam ea *lege obligari:* posse tamen ea *lege* quam invincibiliter ignorat eatenus affici, ut obligetur ad *pœnam improprie dictam*, hoc est, ad *damnum* aliquod, sustinendum. Probatur hujus assertionis pars prior. Nemo aut *culpam* incurrit, aut *pœnam* meretur, qui non *peccat:* at qui legem non servat quam *invincibiliter ignorat*, non *peccat:* si enim peccaret, *obligaretur ad impossibile:* ergo nec merito *culpari* potest, nec juste *puniri*. Quod tamen possit obligari ad *damnum* aliquod ex *lege* sustinendum, quæ fuit nostræ assertionis altera pars, exemplo adducto clarissimum evadet. Esto *lex prohibens* certum aliquod genus *contractus*, qua lege inter alia decernitur omnes ejusmodi

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9. *Thirdly;* He who is *bona fide* and invincibly ignorant of the promulgated Law, by chance or casual impediment, through no negligence of his own; (if, for instance, he has been out of his mind, or labouring under some heavy disease; or is only just returned from a foreign country, and could not know anything of the promulgated Law;) is neither culpable, nor, properly speaking, punishable; but still, he may be by that Law obliged to suffer punishment improperly so called, namely, damage.

The first part of this assertion is thus proved: a person is not either culpable or punishable who does not sin; but he who does not observe a law of which he is invincibly ignorant does not sin; for otherwise he would be obliged to an impossibility: therefore he is neither culpable nor punishable.

But that he may be liable to damage by the Law, (the second part of the assertion,) will be clear by an example. Suppose a Law pro-

contractus post unum mensem *a legis promulgatione* initos, *irritos* prorsus esse et *nullos:* siquis legis istius *bona fide* et *invincibiliter ignarus* mense jam elapso *contractum* ejusmodi forte inierit: immunis quidem erit a *culpa,* propter invincibilem ignorantiam; immunis etiam consequenter debet esse et a *pœna,* quæ nemini juste debetur nisi propter *culpam: damnum* tamen, siquod ex *nullitate initi contractus* emergere contigerit, non solum sustinebit, sed et sustinere tenetur, etiam secundum conscientiam; ex vi *obedientiæ* legibus debitæ, et ex intuitu *publicæ utilitatis.* Quod idem statuendum est, et in aliis quibusdam *legibus* quamplurimis: verbi gratia, in eis quibus *inhabilitantur* personæ, quibus *revocantur* privilegia, quibus *temperantur* fœnora, quibus certa rerum venalium pretia *constituuntur,* et similibus; de quibus fuse tractant *Canonistæ* et *Theologi.* Nec debet hoc cuiquam videri iniquum: etsi enim *damnum* quandoque *pœna* dicatur, id tamen fit *per analogiam* tantum, valde *improprie.* Nam alias *pœnæ* proprie dictæ, et *damni,* longe diversa ratio est. *Pœna* si quis insons afficiatur, fit ei injuria: at *damnum* innocenti citra injuriam sæpissime inferri contingit. Et hæc de *Promulgatione legis,* quantum nostro instituto sufficiat, dicta sunto.

X. De *Lege Pœnali* proxime agendum. Ubi missis eorum plerisque, quæ solent a *Casuistis* multis et inutiliter

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hibiting a certain kind of Contract, and ordaining that all such Contracts, after one month from the promulgation of the Law, shall be void: if any one, being *bona fide* and invincibly ignorant of the Law, should, after the end of that month, make such a Contract, he is free from blame on account of his invincible ignorance, and therefore ought to be free from punishment. But if any damage arise from the nullity of the Contract thus made, this he will have to bear, and will be bound to bear, on the ground of the obedience due to the Law, and from a regard to public utility.

The same is true of many other kinds of Laws; as those which divest persons of rights, recall privileges, regulate interest of money, fix the prices of commodities; treated of at length by Canonists and Divines.

But though this damage be called *penalty* or *punishment,* it is very improperly so called. Punishment inflicted on an innocent person is a wrong; but damage without wrong, *damnum sine injuria,* may fall upon an innocent person.

And so much suffices for our purpose, concerning the Promulgation of Laws.

disputari, quæque magis ad *forum externum* et litigiosum, (idque fere ex jure *Canonico et Pontificio*, quod nostra non multum interest,) quam ad *forum Conscientiæ internum* pertinent: contenti erimus pauca quædam et præcipua delibasse, quæ propius *ad conscientiæ regimen* conducere judicamus. Occurrit in hoc genere DUBIUM PRIMUM, an ad *legis* essentiam aliquo modo pertineat *pœnæ constitutio.* Respondeo, videri pertinere. Non quidem ut aliquid *intrinsece* requisitum ad complendam *legis essentiam,* ita ut *lex* nisi apposita pœna non esset *lex:* sed *consecutive* tamen, ut aliquid necessarium ad hoc ut *lex* finem quem intendit efficaciter consequatur. [c]*Forma* enim et *essentia legis* in *præceptione* consistit (*Præceptionem* hic intelligite latius sumptam, ut *prohibitionem* simul complectatur: quomodo in Scripturis accipi solunt voces מצוה et ἐντολή, et *Theologis* communiter tam *negativa mandata* quam *affirmativa, Præcepta* dicuntur;) et ab hac *præceptione* sola pendet utraque illa *vis,* quam *legi* inesse diximus, *dirigendi* scilicet *actiones,* et *obligandi conscientias* subditorum. Habet enim subditus sufficientem *normam* secundum quam *dirigere* debet actiones suas, et ad cujus observationem, nisi velit officio suo deesse, astringitur in *conscientia,* simulac rescierit legitimum superiorem suum, hoc vel illud *lege præcepisse,* sive sit illi *legi* apposita aliqua *pœna,* sive non. Non ergo ex natura ipsius *legis,* quæ in mera *præceptione* consistit, exurgit hæc *pœnam* apponendi necessitas: sed, (ut *legis præceptio* quæ nuda non [d]sufficeret, suum cum vigore sortiatur *effectum,*) ex duplici alia *hypothesi; subjecti* nempe, et *finis.* Expedit enim ut leges sanctissime observentur, quæ est *hypothesis ex parte finis:* supposita tamen humani cordis innata pravitate (quæ est altera

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c [conf. supra Præl. VI. Sect. 21.]

d *Tacite permissum est quod sine ultione prohibetur.* Tertullian adv. Marcion. Lib. I. cap. 26.

10. We must now speak of Penal Law: where we have to treat not so much with reference to external Law, as to Conscience.

The FIRST DOUBT is, Whether the Penalty belongs in any way to the essence of the Law.

We say that it is not a part of the essence of the Law, but belongs to the essence by consequence, as something necessary in order that the Law may obtain its end.

The essence of the Law is command. From this flow its power both of directing actions and of obliging consciences. Therefore the

hypothesis ex parte subjecti,) fieri vix ac ne vix potest, quin contemptui habeantur vel utilissimæ *leges* (quæ est plerorumque mortalium qua *negligentia,* qua *pervicacia,*) ni [e]*metu* saltem contineantur utcunque in officio, qui ludos faciunt *conscientiæ dictamen.* Hinc factum, (ex *duplici* inquam hac *hypothesi,*) ut Reipublicæ salutare, et sibi necessarium semper judicarint prudentissimi quique *Legislatores,* sancire *pœnis* legum observantiam. Idque *Dei* ipsius exemplo, cui visum est eam quam primam dedit homini *legem,* non sine *pœnæ* interminatione edicere, [f]*Gen.* iii. Aliquot fortassis *boni cives,* quorum parcissima ubique seges est, sola *officii* conscientia, patriæque et [g]*virtutis amore* adducti, etsi nulla esset proposita *pœna,* ultro legibus obtemperarent; ast plurima turba sola [g]*formidine pœnæ* adiguntur ad *officium* faciendum. Patet igitur quæ sit in condendis legibus *pœnarum constituendarum* necessitas.

XI. Dubium secundum est, de *Obligatione legis pœnalis* quoad extensionem: utrum scilicet *lex pœnalis* obliget ad *pœnam* tantum, vel etiam ad *culpam.* Quod est quærere, an subditus *legi* et officio suo ita faciat satis, si paratus sit *pœnam lege* constitutam subire, ut non sit peccati reus etsi *legis præceptionem* non observet; aut annon etiam *obligetur* in conscientia ad præstandum illud quod *legi præcipitur.* Cui dubio ut distinctius et clarius respondeatur, quia magni momenti quæstio est, et cujus frequentissimus usus est in vita

[e] *Qui ratione traduci ad meliora non possunt, solo metu continentur.* Quintil. Instit. Orator. Lib. xii. c. vii. [3.]

[f] [ii. v. 17.]

[g] [Horat. Lib. i. Epist. xv. v. 53.]

need of a penalty does not arise from the nature of the Law itself: but from two other suppositions; the subject of the Law, and the end of the Law. The end of the Law is, to be obeyed: the subject of the Law is man, who by the innate frailty of his heart will only obey from fear. Hence Laws are sanctioned by penalties. Perhaps a few good citizens would obey from Conscience alone; but the majority require the addition of the fear of punishment.

11. The Second Doubt is, Whether a Penal Law imposes an Obligation under penalty only, or under fault also. [See *Prælect.* v. Sect. 5.] That is, whether the subject do his duty if disobeying the Law, he be willing to submit to the penalty; or whether he be also obliged in Conscience to what the Law commands.

This is an important question. To explain it, observe,

First, A positive human law is then only penal when the legislator

communi: explicandæ rei gratia, non erit alienum, nonnulla quæ præcognosci utile est, præmittere. Sciendum igitur *primo, legem* humanam positivam eam solam *pœnalem* dici, quæ ex arbitrio Legislatoris expresse statuit in transgressores *pœnam* aliquam *temporalem:* adeoque in tota hac tractatione, quoties occurrit *pœnæ* mentio, non aliam intelligi pœnam nisi *temporalem.* Dupliciter autem sumitur *temporalis:* aut ut *Spirituali* opponitur, aut ut *Æternæ.* Accipiuntur enim fere in communi sermone ut membra invicem contradistincta: nunc *Spirituale,* et *Temporale;* nunc *Æternum et Temporale.* Quin ergo *tria* sunt omnino *Pœnarum genera;* sive quis *species,* aut *modos,* aut *gradus* dicere
malit. Quicquid enim *Pœnæ* nomine venit, aut est *primo*
1 *Pœna Spiritualis;* qualis est amissio sive carentia gratiæ et
amicitiæ Dei, sive *gaudii interni* et consolationis quæ ex
2 ejus gratiæ amicitiæque sensu oritur. Aut est *secundo Pœna*
Æterna, quæ consistit partim in æterna *carentia beatificæ*
visionis Dei et Christi, partim in æternis *inferni crucia-*
3 *tibus.* Aut est *tertio Pœna Temporalis,* ab utraque priori
distincta; quæ et pertinet ad statum *præsentis vitæ,* et circa *corpus* ac *res externas* tantum versatur; nec tollit ex se et necessario aut *sensum* gratiæ Dei, aut vitæ æternæ *spem:* cujusmodi sunt *amissio pecuniæ, exilium, carcer, infamia, minutio capitis, flagella,* et quæ sunt ejusmodi alia, ipsa denique *mors corporalis.* Ejusmodi pœnarum quæ præcipuæ habentur, et frequentioris sunt usus, ad quatuor capita revocantur, *Ezr.* vii. 26; *Mortem* scilicet, *Exilium, Amissionem bonorum, et Carcerem.*

XII. Sciendum *secundo, Pœnam,* ut *culpæ* oppositam, iterum duobus modis accipi. Aliquando enim late et *mate-*

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expressly assigns some temporal penalty to transgressors. *Temporal* is opposed to *Spiritual,* or to *Eternal.* There are three kinds of punishments:

(1) Spiritual Punishment; the loss of the friendship of God, and of the internal satisfaction thence arising.

(2) Eternal Punishment; eternal misery in the world to come.

(3) Temporal Punishment; confined to the present life, and to external things, which does not necessarily take away either the sense of God's grace, or the hope of eternal life. This is mainly of four kinds; Death, Exile, Loss of Goods, Imprisonment, Ezr. vii. 26.

12. *Secondly;* The distinction of fault and punishment, of culpable and punishable, is taken two ways: sometimes opposed, punishment

rialiter accipitur prout ei opponitur *oppositione contraria;* id est, ut species altera condividens idem genus. Et sic omne *malum* quod cuiquam obvenit, quod non est *malum culpæ*, *Pœna* dicitur, vel *malum pœnæ*, etiamsi non infligatur ei qui id ipsum patitur propter aliquam antecedentem *culpam*, sed aliunde (ut casu fortassis, aut per injuriam) contingat. Sic *morbus* inopinus, *pecunia* furto ablata, *vulnus* a latrone illatum naufragio aut incendio *amissa bona*, omne denique *damnum* aut *nocumentum* quod perpessu grave est, inter *Pœnalia* numerari solent; et sub *Pœnæ* appellatione venire. Quandoque etiam restrictius accipitur *Pœnæ* vocabulum, et quasi *formaliter*, prout Culpæ opponitur *oppositione relativa;* id est, quatenus quis ea afficitur propter præcedentem *culpam:* ut siquis ob rem alterius *furto* sublatam multetur *quadruplo*, aut *exulare* jubeatur propter *seditionem*. Et hæc est propria, prior illa impropria, vocis *Pœnæ* significatio: improprie enim *Pœna* dicitur, quam non præcessit *Culpa*. Unde illa notissima *Pœnæ* definitio, quod sit *Supplicium, quo quis propter delictum afficitur*. Secundum utramque vocis significationem loqui intendimus, in præsenti disputatione prout res postulabit. Sed posterior hæc præcipua est: quia *pœnalis Lex* dicitur, non tam respectu *damni* aut nocumenti, quod alicui potest occasione *Legis*, (idque fortassis juste, sine aliqua tamen sua *culpa*) contingere; quam respectu illius *supplicii*, quod ex *legis* determinatione constitutum est eis qui eam transgrediuntur.

XIII. Sciendum *tertio*, *Legem Pœnalem*, aliam esse *pure Pœnalem*, aliam *mixtam*. *Lex pure pœnalis* est, quæ simplici ordinatione *pœnam* apponit tantum, nec tamen quicquam expresse aut *jubendo* præcipit aut *vetando*. Exempli gratia, *Lex* sit quæ potestatem faciat popularibus alicujus *urbis* vel *oppidi*, eligendi quotannis unum aliquem ex honestioribus civibus in *Prætorem*, cum adjecta hujusmodi clausula;

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meaning any evil which is not incurred by fault; sometimes connected, punishment meaning evil which results from fault. The latter is the proper meaning of punishment, and is here intended.

13. *Thirdly;* Some Laws are purely Penal, others mixedly Penal.

A purely Penal Law is one which appoints a punishment, but does not expressly command anything. Such for instance would be a law authorising the citizens of a city to elect every year one of their number as Mayor; and declaring that "Any citizen who, being elected as Mayor, refuses to serve, shall pay a hundred pounds to the common

"*Qui civium electus præturam urbanam recusaverit, centum aureos in commune pendito.*" Hæc lex *pure pœnalis* est: quia *pœnam* constituit quidem recusantibus id munus suscipere; nulli tamen idipsum aut suscipere *præcipit*, aut *prohibet* recusare. *Lex pœnalis mixta est*, quæ aliquid fieri *præcipit* aut *vetat*, adjecta insuper *pœna* transgressoribus irroganda. Exempli gratia, ponamus *Legem* sub hoc aut simili forma promulgari, "*Nemo merces domesticas extra regnum exportato, aut peregrinas merces advectas intra regnum divendito, nisi consuetum vectigal ante solverit: qui secus fecerit mercium amissione luito.*" Lex *pœnalis* est, quia appositam habet *pœnam:* non tamen *pure* pœnalis, sed *mixte;* quia (sub illa *pœna*) *præcipit* vectigalia solvi, *vetat* efferri aut distrahi merces vectigali insoluto. Sunt qui *duabus* his *tertiam Legis pœnalis speciem* addendam putant: scilicet, quæ *præceptionem* simul contineat et *pœnam*, neutram tamen positive et specialiter, sed *sub disjunctione ἀδιαφόρως* alterutram. Exemplo sit *Lex* sub tali forma, "*A popularibus electus, aut præturam gerito, aut centum pendito.*" Atqui nihil opus est ob hanc causam addi *speciem novam*. Nec enim multiplicandæ sunt rerum *species* sine necessitate: et *disjunctiva* hæc forma proponendi legem ad *pure pœnalem* referri debet, quia *præceptionem* reipsa nullam continet. Si dicas, *præcipi* duarum rerum, etsi non *definite* alteram, *indefinite* tamen alterutram: facile regeram, at *præcipere indefinite*, et sub disjunctione, non magis *præcipere* est, (siquidem proprie loqui velimus,) quam *homo pictus* est *homo*. Est ergo *disjunctiva* hæc *Lex*, *pure* (ut dixi) *pœnalis:* quod vel ex collata utriusque exempli forma manifestum est. Sive enim edixerit Legislator illo modo, *Qui electus præturam recusaverit centum pendito;* sive hoc altero, *Electus aut præturam gerito, aut centum pendito:* tantundem est. Utrobique *sensus* idem, eadem *verborum vis*, par *obligatio*.

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chest." Here no one is commanded or forbidden to do anything. A mixedly Penal Law is when there is a command or prohibition, and a penalty for transgression. For example; "No one shall export or import commodities without paying the custom-house duties: any offender shall forfeit the commodities." This is a Penal Law, because there is a penalty; but mixedly Penal, because it commands payment of customs, and forbids import or export otherwise. Some make a third class, when the command and penalty are alternatives; but this really comes into the first.

XIV. Sciendum *Quarto,* inter obligationem ad *Culpam* et obligationem ad *pœnam temporalem,* non esse necessariam connexionem; aut certe non ita necessariam ut sit etiam *reciproca.* A *pœna* quidem *temporali proprie dicta* ad *culpam* necessaria est consecutio: validum proinde est hoc argumentum, *Petrus ex lege puniendus est,* ergo *culpam admisit.* Sed a *pœna temporali minus proprie dicta,* puta *damno* aut re simili, non necessario infertur *culpa:* potest enim aliquis *sine culpa* sua obligari ad *damnum,* ut aliquoties ante diximus. Neque etiam a *culpa* ad *pœnam temporalem reciproca* est consecutio; quia fieri potest ut quis obligetur ad *culpam,* ut interim non obligetur ad *pœnam:* pœnam nimirum temporalem; nam *spiritualis* et *æternæ pœnæ* longe alia ratio est. Verbi gratia; siquis *culpam* admiserit (puta si *mendacium* dixerit, si amici *arcana consilia* prodiderit, si proximi *famam susurris* læserit, aut aliud simile) cui *lege humana* nulla sit *pœna* constituta: non poterit sine injustitia ab homine, neque vero necesse est eum a Deo affici *pœna* aliqua *temporali.* Ceterum, ne quis sibi improbus nimis adblandiatur, peccetque ista licentius, quod putet se exsortem fore *pœnæ temporalis:* expedit ei subinde meminisse, obligatum se nihilominus ad *pœnam* multo graviorem, *spiritualem* scilicet, et *æternam.* Quæ utraque *pœna* cum omni *culpa* ita necessario et *reciproce* conjuncta est, ut et *pœna* semper supponat antecedentem *culpam,* (Deus enim neminem *punit* immeritum;) et *culpam* necessario tandem consequatur (nisi succurrat Dei clementia, culpam remittentis in Christo, per fidem et pœnitentiam,) commerita *pœna.*

XV. His ita præmissis, ut dubio proposito respondeatur, pono aliquot conclusiones.

CONCLUSIO PRIMA. Quatenus *lex pœnalis* obliget subditum in conscientia, ex mente et *intentione Legislatoris,* si de ea certi aliquid constet, imprimis judicandum est. Hoc est, si certo constet *Legislatorem* intendisse obligare subditos *ad*

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14. *Fourthly;* Between an obligation under fault, and an obligation under temporal punishment, there is no necessary connexion; at least no necessary reciprocal connexion. Punishment, in its improper sense, [see Sect. 12] does not necessarily imply fault. Fault (for instance, lying or slandering) does not necessarily imply punishment by men, nor temporal punishment, even by God. Such faults, however, do imply spiritual and eternal punishment, except remitted by God through Christ. This being premised, we have

culpam etiam, et non solum *ad pœnam;* certum est eos obligari ad *observandum* id quod lege *præcipitur*, nec satisfacere officio, si parati sint *pœnam* lege constitutam *subire.* Quod si manifestum sit eum non intendisse obligare nisi *ad pœnam tantum;* subditos etiam certum est *ultra pœnam* non obligari. Ratio est, quia fundamentum *obligationis Legum*, (ut [h]alias ostendimus,) est *Legislatoris* potestatem habentis *voluntas* sufficienter manifestata: Ergo ubi *voluntas Legislatoris*, quæ est adæquata *mensura* ejus *obligationis* quam *Lex* inducit, manifesta est; de *obligationis mensura* non est quod ulterius ambigatur.

XVI. Quæres fortasse, quæ *certitudo* sufficiat ad hoc, ut subditus aliquis possit esse securus in conscientia, sibi satis constare quæ fuerit mens et *intentio Legislatoris?* Respondeo, frustra expectari in [i]*Moralibus*, propter infinitam circumstantiarum varietatem et incertitudinem rerum humanarum, *certitudinem* quam vocant *Mathematicam*, quæ demonstratione constat, et cui impossibile est subesse falsum. Haberi tamen potest de *Legislatoris intentione* plerumque *certitudo* quædam *Logica;* quæ scilicet colligitur ex ipsis *Legis verbis:* e quibus ita perspicue claret quandoque ipsius *intentio*, ut non sit opus ulteriore evidentia. Elucescit autem *mens Legislatoris*, partim ex forma et *modo præcipiendi;* partim ex *pœnæ* appositæ *gravitate:* sed præcipue ex *procemio ipsius Legis;* in quo, ut acceptior sit populo *lex*, solet *Legislator* consilii sui de ea Lege ferenda *causas* et rationes exponere, quam sit *Lex justa*, quam fuerit tollendis incommodis et abusibus *necessaria*, quam futura sit *Reipublicæ utilis.* Ex quibus omnibus debite

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[h] [Vid. supra Præl. IV. § 5; V. § 5.] [i] [conf. Aristot. Eth. Nic. Lib. I. cap. iii.]

15. Conclusion First. If it is certain that the legislator intended to oblige the subject under fault, and not under penalty only, he is obliged to obey the command, and not merely to submit to the penalty.

For the will of the legislator is the measure of the obligation.

16. What kind of certainty respecting the intention of the Lawgiver suffices for the security of the subject's Conscience?

In morals we cannot have mathematical certainty. The intention of the Legislator appears by the language of the Law, especially of the Preamble; and from this we may generally obtain a moral certainty. But if any one still have difficulties, let him abide by the advice of some pious and skilful person.

expensis, una cum *circumstantiarum* etiam justa collatione, non erit difficile ut plurimum viro probo et prudenti intentionem *Legislatoris perdiscere*, et habere de ea *certitudinem sufficientem*, id est, *Moralem*; (in moralibus enim sufficit *certitudo moralis*;) ita ut possit concludere *Legislatorem* hoc, vel diversum, indubie *intendisse*. Quod si subditus non sit tanti acuminis vel judicii, ut omnia possit rationum ex utraque parte momenta rite expendere; aut si vereatur, (quum sit unusquisque in *causa propria* parum *idoneus judex*,) ne in sui ipsius gratiam, *Legislatoris* mentem *favorabilius* interpretetur quam oporteret: consultissimum erit subdito in utroque casu, si negotium sit tanti, (hoc est, si futurum sit ei valde incommodum et onerosum id observare quod *Lege* præceptum est) ad virum aliquem probatæ pietatis et peritiæ negotium deferre, ei rem totam nude, simpliciter et sincere aperire, et in ipsius demum judicio et sententia acquiescere.

XVII. Sed quia fieri potest, nec raro fit, ut post adhibitam omnem diligentiam de *mente Legislatoris* ex ipsa *Lege* nulla habeatur certitudo, aut non tanta ut in ea tuto acquiescat viri boni conscientia: quærendum ulterius est, in tam dubio casu, utram *interpretationem* magis expediat sequi; *benignioremne* quod nonnullis visum, an ut alii suadent, *strictiorem?* Dicitur vir magnæ inter *Canonistas* auctoritatis [k] *Martinus Navarrus* in ea fuisse sententia, ut putaret nullam *legem pœnalem* obligare *ad culpam* per se, sed tantum *ad pœnam*. Alii e diverso docuerunt, omnem *Legem pœnalem*, nisi de Legislatoris mente constet in contrarium, obligare *ad culpam*. Fateor mihi semper suspectas fuisse *extremas* quasque *sententias*: et fieri potest, ut quemadmodum illi nimis *laxe*,

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[k] [h. e. ab Azpilcueta, Enchiridion, cap. xxiii. § 48 sqq. Opp. Tom. III. p. 203.]

17. But if doubt still remain, Are we to incline to the gentler or the stricter interpretation?

Martinus Navarrus held that no Penal Law was obligatory under fault, but only under penalty. Others have taught that every Penal Law, except the intention of the legislator be plainly otherwise, is obligatory under fault. We mistrust both extreme doctrines; and make this our

SECOND CONCLUSION: A purely Penal Law, of itself and ordinarily, is obligatory only under penalty, not under fault.

1; *A purely Penal Law;*

2; *Of itself;* for by circumstance, and on the supposition of a

sic isti nimium *rigide* pronunciarint. Ut ergo in re tam dubia, certi aliquid quod sequamur habeamus: esto hæc

CONCLUSIO SECUNDA. *Lex pure pœnalis, per se et ordinarie, obligat tantum ad pœnam, non item ad culpam.* Dico
1 *primo, Lex pure pœnalis :* sive ea categorice enuncietur, sive
2 disjunctive. Dico *secundo, Per se:* quia per accidens, et ex suppositione *prioris obligationis* potest obligare et ad culpam. Cum scilicet *lex pœnalis* eo fine lata est, ut *metu pœnæ* subditi cogantur ad *officium,* ad quod ante obligati erant *lege* aliqua priore, *divina, naturali,* aut *humana.* Sic istæ pœnales, "*Qui hominem occiderit, capite plectitor. Qui merces exportat, aut vectigal ante solvito, aut merces amittito,*" obligant *ad culpam :* ita ut conscientiam non liberaverit siquis *pœnam* subierit, nisi et *præceptioni legis* paruerit. Non tamen *per se et virtute propria* sic obligant, sed vi *obligationis præcedaneæ* ex anterioris alicujus legis præceptione enatæ. Obligatus enim erat subditus, dictis legibus ex hypothesi nostra nondum latis, et *lege divina* ne perpetraret *homicidium ;* et
3 *lege patria,* ad *vectigalia* imperata solvendum. Dico *tertio Ordinarie :* quia fieri potest *extraordinarie,* rerum præsentium statu et conditione sic exigente, ut quod alias *liberum* esset potuissetque omitti, evadat *pro hic et nunc* ita factu *necessarium,* ut peccet et officio suo desit qui idipsum non fecerit. *Ordinarie* tamen, et extra casus ejusmodi singulares; qui paratus est *pœnam* legi appositam subire, lege illa, si sit *pure pœnalis,* non ultra tenetur;

XVIII. Ratio totius *Conclusionis* est, quia *Legislator* non obligat nisi *præcipiendo :* proinde *simplex ordinatio,* quæ

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prior obligation it may oblige under fault also. As when a Penal Law is given to compel men to duties to which they were bound before by Law, divine, natural, or human: as, "Whoso slays a man, let him be put to death:" "Whoso exports goods, let him pay the customs, or forfeit the goods:" these oblige under fault, so that a man does not satisfy his conscience, who submits to the penalty; he must also obey the Law. But this obligation arises out of the preceding Law, divine in the one case, human in the other.

3; *Ordinarily;* for it may happen in extraordinary cases that he transgresses duty as well as incurs punishment.

18. The reason is, that a purely Penal Law contains no command. If the Legislator intended to oblige under fault, he might easily have said so.

The same is true of Local Laws, "Bye Laws," made at the Sessions

nihil præcipit, non magis *ex se obligat*, quam amici *consilium*, aut viri gravis *adhortatio*. Ut enim qui dat alteri *consilium*, aut eum *hortatur* ut hoc vel illud faciat, *declarat* quid ab eo cupiat fieri, non tamen eum ut id faciat *obligat*, sed nec obligare intendit: haud aliter *Legislator* ea lege, qua nihil subdito *præcipit*, sed tantum ostendit quid ab eo sub propositæ *pœnæ* conditione fieri velit, præsumendus est non habuisse voluntatem eum ulterius *obligandi* quam ad propositam *pœnam*. Quia si intentionem habuisset obligandi et *ad culpam*, facillimum ei fuisset, addita duntaxat *præceptione* suam illam intentionem significare. Ergo cum nec simplex et *nuda ordinatio* ex se obliget *ad culpam*, nec possit additio *pœnæ temporalis* ex se obligare nisi *ad pœnam temporalem* subeundam; manifestum est *Legem pure pœnalem*, quæ præter ista duo (simplicem dico *ordinationem*, et adjectam *pœnam temporalem*,) nihil in se continet, quorum neutrum est *obligatorium ad culpam*, non posse ex se *ad culpam*, sed *ad pœnam* tantum obligare. Et est simile de *Legibus* quas vocant *conventionalibus*: quo exemplo libentius utor, quod conclusionem nostram non confirmet modo, sed et egregie illustret. Cui etiam addi possit *Testatoris Voluntas;* et alia nonnulla, quorum est (quod ad *obligandi vim* saltem attinet) ratio omnino consimilis. Incolæ alicujus villæ, qui *condendi leges* proprie dictas potestate carent, in *curia domini manerii* (sic enim ex usu forensi loquendum est) aut alias *extra curiam*, de rebus quibusdam ad pacem et justitiam inter vicinos conservandam conducenti-

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for the good management of a neighbourhood. If, for instance, it be there agreed that every householder shall in the month of May, give three days' labour to mending the roads; and if he fail, be fined twenty pence for each day, (the price of a day's labour being tenpence;) it is plain that the persons so contracting intended that the householders should give their labour, for if not, they would not have made the fine double the value of the labour: but it is also plain that they did not intend to bind each other except to the extent of the fine, if any one could not or would not give his labour.

So if in a testament, (for a testament is a kind of Law, binding the executor and the legatees,) we have "Caius appoints that Caia, his wife, as long as she remains unmarried, shall keep a certain property; but if she marries again, shall forfeit it;" it is plain that Caius wished his wife not to marry again; for that was the object of the condition: but he does not, nor can, intend to bind her to abstain from marrying under fault, so that if she marry again she is culpable.

bus inter sese *paciscuntur*, multa etiam pecuniaria *nomine pœnæ* iis constituta, qui sic inita *pacta* violaverint. Cujusmodi *conventiones*, nostratibus vernaculo sermone By-Laws, dicuntur, hoc est, *Incolarum leges*: ([1]By etenim prisca Saxonum lingua *habitationem* significare notant Antiquariæ rei peritiores viri docti:) nos cum aliis, docendi causa, *legis conventionales* dicemus. Etsi enim *pacta* sint solum, et *conventiones* inter privatas personas, et non *leges* (siquidem proprie loqui velimus) ob defectum publicæ auctoritatis; *leges* tamen dici solent propter ἀναλογίαν illam quam habent cum proprie dictis legibus, quantum ad duos illos sæpe dictos *legum effectus*, *dirigendi* scilicet et *obligandi*. Nam sicut *leges* subditos; sic istæ *conventiones* personas consentientes, et *dirigunt* in agendo, et *obligant* ad officium. Certum est autem in istiusmodi *conventionibus*, personas contrahentes non intendisse se mutuo obligare *ad culpam*, sed *ad pœnam* tantum, exempli gratia, "*Paciscuntur inter se incolæ alicujus villæ, singulos patres familias mense Maio quotannis triduanam operam reficiendis viis publicis personaliter collocaturos: qui non fecerint* (supponamus autem singulas diurnas operas decem denariis æstimari) *viginti denariorum multa luituros.*" Hac *lege conventionali* certum est personas contrahentes illud imprimis *intendisse*, ut *viæ publicæ* quotannis reficerentur, quin et illud insuper voluisse, ut unusquisque paterfamilias *personalem operam* in rem tam utilem conferrent: aliter enim dupli multam secus facientibus non constituissent. Ceterum non minus ex altera parte certum est, eos non *intendisse* se mutuo ulterius *obligare* quam ad *multam* solvendam; si cui ipsorum aut per alia negotia non liceret, aut quacunque alia de causa non liberet, *personalem* suam *operam* præstare. Sic in re testamentaria (nam et [m]*Testamentum* instar *legis* est, executorem et [n]legatorios *dirigendo* pariter et *obligando*) "*Caius vult ut Caia uxor quoad vidua remanserit ædes cum fundo vicino quas a Titio emit retineat; si alteri nupserit, eas amittat.*" Constat id voluisse *Caium*, ut uxor vidua remaneret, nec alteri nuberet, ea enim intentione *conditionem* illam apposuit, ut uxorem tanti *damni metu* a

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[1] Camden. in Britanni. [Tom. I. p. cx. ed. Gough.]

[m] *Imperia mortuorum.* Senec. III. Controv. 9.

[n] *Legatum est, quod legis modo testamento relinquitur.* Ulpian. Instit. cap. 26.

secundis nuptiis arceret. Nec tamen apponendo talem conditionem intendit (imo ne potuit quidem intendere) uxorem obligare *ad culpam,* ita ut peccaret si alteri nuberet.

XIX. Ast, inquies, *ad culpam* et *Pacta* obligant, et *Testamenta* obligant. Nam et is *peccat,* qui *pactum* conventum non servat: et peccat *legatarius,* si aliter fecerit quam testamento cautum est. Respondeo, longe aliud esse, si quis *conventa, testamentum,* aut *leges* violet: aliud si quis contra *ejus quicum contraxit, testatoris* aut *Legislatoris voluntatem* fecerit *sub conditione* latam vel prolatam. Quid intersit, quæ ante adduximus exempla optime docebunt. In *legem illam conventionalem,* de triduana opera præstanda sub multa pecuniaria; non continuo *peccat,* qui operam non confert, nisi et *multam* solvere recuset: stat enim *pactis* si alterutrum fecerit, idque secundum *intentionem paciscentium,* qui intendebant ad illam operam præstandam se mutuo *obligare* quidem, non tamen simpliciter et absolute, sed *sub conditione* prædicta. Sic et in *lege* illa *Testamentaria, Caia* si *Caio* defuncto alteri nubat, *non peccat* nubendo, etsi certum sit *maluisse testatorem,* proinde et *voluisse* (nam *qui mavult vult*) ne id fieret: *peccaret* tamen procul dubio, si alteri jam nupta, legatas *testamento sub ea conditione* ædes cum fundo sibi retineret nec hæredi restitueret. Ratio utriusque exempli eadem est; scilicet quia *obligatio* utrobique non fuit pura, *simplex et absoluta,* sed *conditionalis* tantum obligatio: *Conditio* autem semper et ex sui natura suspendit *obligationem,* ita ut *conditione* præstita, ipso facto, quasi jam soluto vinculo, cadat *obligatio.* In *legibus* item *pure pœnalibus* eodem omnino modo se res habet, quantum *ad obligandi modum et mensuram:* quod facile intelligent, quibus ista

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19. It may be objected that both Contracts and Testaments bind under fault; so that any one is culpable who violates them. But we reply, that in the examples supposed, those only violate them, who neither do what is pointed out, nor submit to the fine. The man who does not give his labour to the road in the former example, would violate the agreement, if he were to refuse to pay the fine. Caia would violate the will if she married again without giving up the property. But the obligation in both cases is not pure and simple, but conditional. The Condition by its nature suspends the obligation: if the condition be performed, the obligation falls. And the same is the case in purely Penal Laws.

inter se conferre vacat et libet; ut non sit nobis opus his explicandis diutius immorari.

1 XX. Sed instabit adhuc fortassis quispiam: *primo*, non
posse quenquam obligari *ad pœnam*, quin obligetur etiam *ad*
culpam: quia non potest juste alicui *pœna* irrogari, nisi
propter antecedentem *culpam*, juxta illud Augustini, [o]*Omnis*
2 *pœna si justa est, peccati pœna est. Secundo*, de ratione
legis esse, ut aliquid *præcipiat:* ergo *legem* illam, quam
dicimus *pure pœnalem*, aut non habere rationem *legis*, si nihil
præcipiat; aut si contineat in se saltem implicite aliquam *præ-*
ceptionem, obligare et *ad culpam:* cum sit *culpa* nihil
aliud, quam *justæ præceptionis transgressio* sive violatio.

XXI. Ad prius *objectum* varie responderi potest. Vere enim dici potest *primo*, *Pœnam* quidem *æternam*, in quantum perfectam habet pœnæ rationem, nec potest aliter considerari nisi *sub ratione pœnæ*, propterea necessario supponere *culpam* aliquam antecedentem quæ eam promerita sit, et propter quam, sine ullo alio respectu, qui *culpæ* reus est, ea *pœna* afficitur: at *pœnæ spiritualis*, tum etiam multo magis *pœnæ temporalis*, non esse eandem per omnia rationem. Etsi enim supponat utraque quatenus *pœna* est antecedentem aliquam *culpam* tali *pœna* dignam (alias utique non esset *justa:*) quia tamen potest utraque aliter considerari quam *sub ratione pœnæ*, per respectum scilicet ad *finem* a puniente intentam, (hoc est, quatenus ordinatur non tam ad *vindicandam culpam* præteritam, quam ad *impediendam culpam* futuram;) inde fit, ut nec Deus, cum hominem *pœna*, sive *spirituali* sive *temporali* affligit, nec homo, cum hominem *pœna temporali* afficit, semper eorum *peccata* aut *culpas* respiciant,

[o] Augustin. Retractat. Lib. I. cap. ix. [§ 5. Opp. Tom. I. p. 13. D. ed. Bened.]

20. Two further Objections may be considered.

First; No one can be bound under punishment, except he be also bound under fault; for punishment implies fault.

Second; It belongs to the Essence of a Law to command; so that what we have called a purely Penal Law, either is not properly a Law; or if it contain in it implicitly some command, thereby obliges under fault.

21. To this we reply, *First*, that eternal punishment does indeed imply fault; but that spiritual or temporal punishment inflicted by God, and temporal punishment inflicted by man, does not necessarily imply fault, but may be inflicted for some different end; as, to prevent future fault, or to shew the work of God, John ix. 3.

sed habeant sæpissime propositos sibi alios *fines*. Quo pertinet responsum illud domini nostri Jesu Christi discipulis interrogantibus de *homine cæco nato,* suane an paterna culpa id ei accidisset, ut *cæcus nasceretur, Joh.* ix. 3. *Nec iste peccavit,* inquit, *nec parentes ejus* (scilicet, ut cæcus nasceretur) *sed ut opera Dei manifestentur in eo,* hoc factum est. Ratio est: quia in *moralibus,* eorum quæ fiunt æstimatio, itemque et denominatio, a *causa finali* potius sumi debet, quam a *causa efficiente meritoria.*

XXII. Deinde *secundo* dici potest, *pœnæ temporalis* relationem ad *culpam* in ea duntaxat *pœna* proprie spectari, quæ culpæ *relative* opponitur; non item in ea quæ culpæ *contrarie* tantum opponitur, quæ est laxior ejus vocis significatio et minus propria. Hanc distinctionem ante explicuimus in *secundo* hujus *dubii præcognito;* nec opus est multis repetere. Suffecerit meminisse pœnam *legi pure pœnali* appositam, non stricte et proprie, sed improprie et late *pœnam* dici, prout significat alterum *mali* genus *a malo culpæ* diversum. Quale genus *pœnæ* potest sine injustitia legali alicui inferri *propter finem utilem,* (ut, verbi gratia, ad vitandum aliquod incommodum publicum) citra peccatum personæ patientis. Sic enim accepta *pœnæ* appellatio, omnia *infortunia, damna, adversa,* aut quicquid homini accidit quod mallet non evenisse, complexu suo continet.

XXIII. Ista si cui vestrum minus satisfecerint, (nec ego sane multum contendero,) ast illud saltem imprimis dignum est observatu, quod *tertio loco* nunc subjicio, quum et totam hanc exhauriat *dubitationem,* et alteri simul *objectioni* aptissime occurrat. Nimirum *legem pœnalem* qualis nunc sub incude est, quum utrumque intendat, et *obligare* subditum scilicet et tamen *non nisi conditionaliter* obligare; *dupliciter* posse considerari, vel *tripliciter* potius. *Primo,* præcise quantum 1
ad id, ad quod sub tali conditione præstandum intendit obligare: *secundo,* quantum ad *conditionem* illam præcise, sub 2

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22. *Secondly,* we say, as before, that punishment, in one sense, does not imply fault, but is opposed to fault. See Sect. 11.

23. *Thirdly,* we say that the Law obliges under fault, but obliges conditionally only. The whole Law is to be taken together; the ordination, the condition, and the combination of the two. A man is culpable who neither conforms to the ordination, nor submits to the condition. See Sect. 19.

qua intendit obligare; quorum illud *legis ordinationem*, hæc
3 appositam ei *pœnam* continet: *tertio* quoad *totum aggrega-*
tum, hoc est, *legem* ipsam totam, quæ ex utriusque complex-
ione consistit, simul sumptam. Hac posita distinctione, dico
1 *primo*, legis partem illam quæ *conditionem* sive pœnam tan-
tum continet, *per se* non obligare *ad culpam: nuda* enim
conditio nihil ponit in esse, ut omnes concedunt, et est ex se
manifestum. Non ergo *peccat*, imo officio suo optime defun-
gitur, qui *legis pœnam* vitat, modo id quod lex *ordinat* præ-
2 stiterit. Dico *secundo*, nec illam legis partem quæ *ordina-*
tionem continet, per se obligare *ad culpam*. Quia nulla *lex*
obligat ultra intentionem *Legislatoris: Legislatorem* autem
non intendisse ea legis parte *per se* obligare subditum *ad cul-*
pam certum est; tum enim intendisset eum *simpliciter obli-*
gasse, quia illa pars per se et præcise sumpta nullam continet
in se *conditionem;* at ex addita in altera parte legis *condi-*
tione patet eum non intendisse *simpliciter obligare* ad id
præstandum quod lex ordinat, sed *sub conditione* in lege
3 expressa. Dico tamen *tertio*, *legem pœnalem*, integre et
conjunctim sumptam, obligare et *ad culpam*. Hoc sensu,
ut nimirum *culpæ* reus sit et *peccet* contra legem, qui cum
alterutram ejus partem præstare debeat, *neutram præstat*.
Sicut enim apud *Dialecticos* veritas propositionis *disjunctivæ*
pendent ex veritate *unius alicujus partis;* ita ut *tota vera*
sit cujus *altera pars* est vera, *falsa* autem non sit nisi *utraque*
pars sit falsa; sic in *moralibus*, legem *disjunctivam* (omnis
autem *lex pure pœnalis* disjunctiva est, aut *formaliter*, aut
æquivalenter,) legem, inquam, disjunctivam *observat*, qui facit
e duobus propositis *alterutrum;* non *violat* nisi qui *utrumque*
negligit.

XXIV. His satis, ut opinor, explicatis, quæ de *legis pure pœnalis* obligatione dicenda videbantur, ad *legem pœnalem mixtam* transeamus. De qua sit *tertia* nostra *Conclusio; Lex pœnalis mista* (quæ scilicet aperte aliquid *præcipit* observari, et quo diligentius observetur quod præcipitur, *pœnam*

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24. Conclusion Third. A mixed Penal Law obliges both under fault and under penalty. A person does not satisfy either the Law or his Conscience by submitting to the penalty; he is also bound to do what the Law commands.

The Law obliges under penalty, by the form of it; it obliges under fault, because it contains a command: for "sin is the transgression of

transgressoribus constituit) *et ad culpam obligat, et ad pœnam:* ita ut nec *legi* satisfaciat, nec *conscientiæ* suæ, qui *pœnam* sustinet, nisi et illud fecerit quod *lege* imperatur. Ad *pœnam* obligare ejusmodi *legem* nemini potest esse dubium: alias quis usus esse posset *adjectæ pœnæ?* Obligare autem et *ad culpam* inde patet, quod manifestam continet *præceptionem;* et omnis præceptio obligat *ad culpam:* siquidem nihil aliud est *Culpa,* quam præcepti alicujus transgressio; ἡ γὰρ ἁμαρτία ἐστὶν ἀνομία, [p] 1 *Joh.* iii. Nec potest probabiliter dici, quod tamen sensisse videtur *Navarrus,* Legislatorem apponendo *pœnam* voluisse significare, se non habuisse intentionem obligandi nisi *ad* illam appositam *pœnam* tantum. Animadvertite quæso, quam perversum sit *pœnæ* constitutionem, quam certum est eo sine appositam esse *præceptioni,* ut ipsa *præceptio* ejus *pœnæ metu* sanctius et diligentius observaretur, sic interpretari, ut *præcepti obligationem* invalidet et tollat? Infinitæ sunt per orbem terrarum, adjectis insuper *pœnis,* latæ in fures, latrones, homicidas, perjuros, aliosque nefarios et sceleratos cives, *leges:* tulit etiam *legem* Deus creator protoplastis hominibus, qua eis *esum ligni* quod erat in medio paradisi *interdixit,* apposita si comederent *mortis pœna, Gen.* ii. Adeone reperiri quenquam sanæ mentis inopem, ut existimet obligatum lege hac divina *Adamum,* obligatos legibus illis humanis *alios, ad pœnam* tantum, non etiam *ad culpam?* Quis dixerit (ut illas alteras omittam *leges humanas*) *lege illa divina* Adamum non fuisse *obligatum in conscientia,* ut a fructu vetito *abstineret;* sed ad hoc tantum, ut si comederet paratus esset *mortis sententiam* subire? Rejecta ergo *Navarri* sententia, (si ea fuerit ipsius indubie sententia, quod de tanti

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p [vers. 4; conf. supra Præl. iv. Sect. 14; Præl. v. Sect. 5.]

Law," 1 Joh. iii. Navarrus is wrong when he says that the legislator, by the penalty, meant to forbid the transgression, only to the extent of the penalty. Men are perverse, when punishment, which is assigned as a sanction to enforce the Law, is interpreted so as to frustrate the Law. There are Laws against robbers, thieves, murderers, and the like. Shall we suppose that if a man submits to the penalty of these he is not culpable? God made a Law for Adam forbidding him to eat of the Tree of Knowledge; with the penalty of death added. Was not Adam bound in conscience to abstain from eating?

And thus a Mixed Penal Law obliges both under fault and under penalty.

nominis viro vix crediderim) quæ et periculosa est, et ab omnibus fere reprehenditur; dicendum est, *Legem pœnalem mixtam,* quum et *pœnalis* sit, et *præceptiva,* obligare et *ad pœnam* et *ad culpam: ad pœnam,* quatenus *pœnalis* est, et ad *culpam,* quatenus *præceptiva* est.

XXV. Restat DUBIUM TERTIUM; An et quatenus teneatur *legis pœnalis transgressor,* ad pœnam lege constitutam *ipso facto* subeundam? Festinato opus est; ideoque rem
1 paucis absolvam. Dico igitur *primo,* si *pœna* lege constituta ejusmodi sit, ut non imponat transgressori aliquid ab ipso *faciendum* vel *patiendum,* sed consistat potius in quadam *inhabilitate* ad faciendum aliquid quod facere esset ipsi *commodum,* aut in *incapacitate* recipiendi aliquid quod esset ipsi *gratum* vel *utile;* teneri legis violatæ reum *ipso facto* pœnam subire. Multæ sunt *leges* quæ prohibent transgressores hoc vel illud facere; ut leges civiles propter certas causas impediunt *translationem dominii.* Sunt etiam multæ *leges,* quæ delinquentes decernunt ad aliquod temporis spacium *incapaces* alicujus *muneris* vel *dignitatis:* ut si prohiberetur statuto Academiæ *perturbator pacis,* ne liceat ei infra biennium post crimen admissum in domo Congregationis *gratiam suam* proponere. In his aliisque similibus casibus, ubi *pœna* in sola *inhabilitate* vel *incapacitate* consistit; quia ad ejusmodi pœnam sustinendam non requiritur aliqua personæ puniendæ *cooperatio,* sed operandi potius *cessatio* quædam: tenetur sine dubio qui legem violavit, eam *pœnam,* etiam non requisitus, ultro suf-
2 ferre. Dico *secundo,* si *pœna* lege constituta sit ejusmodi, ut ad *legis executionem* necessario requiratur *cooperatio* aliqua personæ delinquentis; hoc est, ut qui *puniendus* est ipse aliquid *faciat;* non teneri reum (*ordinarie*) ad ejusmodi

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25. The THIRD DOUBT is, Whether he who transgresses a Penal Law is, *ipso facto,* bound to undergo the punishment.

First, if the punishment be such as does not require the offender to do or suffer any definite thing, but consists in some loss of right or privilege, some incapacity of act or office; so that the co-operation of the offender is not required, but only his quiescence; he is bound, *ipso facto,* to suffer the punishment. For instance; if by a Law of the University, a disturber of the peace were prohibited for two years from proposing his Grace in the Academical Senate.

Secondly: If the punishment be of such a kind that the person to be punished has to do something in co-operation with the punishment; he is not ordinarily bound to submit to punishment till the judge has

pœnam *ipso facto* subeundam, ante latam a judice sententiam;
sive, quod idem est, priusquam a persona legitimam auctori-
tatem habente ea *pœna* ab ipso exigatur. Tenetur quidem
reus *pœnas dare;* sed si reposcantur: alias non tenetur.
Dico *tertio,* reum, post latam a judice *sententiam,* aut a per- 3
sona legitimam auctoritatem habente *requisitum,* ad pœnam
sponte suscipiendam teneri, etiam cum aliqua sua *cooperatione;*
si ejusmodi *cooperatio* non sit contra *humanitatem,* etsi alias
fortasse admodum gravis et onerosa. Exempli gratia, si ju-
beatur pœnæ nomine grandem *pecuniæ summam dependere,*
regno exire, etc. tenetur reus vi legis id facere. Quod si
pœna imposita non *grave* sit tantum, sed aliquid etiam in se
contineat quod sit *inhumanum,* ut si quis jubeatur *se flagel-*
lare, dextram sibi præcidere, cicutam bibere etc., dico *quarto* 4
in ejusmodi casibus teneri quidem reum, ad *pœnam* eam, quam

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pronounced sentence. He is to pay the penalty, but only when it is demanded.

Thirdly: When the Judge has pronounced sentence, or when the penalty is duly demanded by an authorized person, the condemned person is bound to submit frankly to the punishment; provided his co-operation be not against humanity: as if the punishment be, to pay a heavy fine, to leave the country, or the like.

Fourthly: If the punishment be not only heavy, but contain something inhuman, as if the person be required to scourge himself, to cut off his right hand, to drink poison; he is bound passively to submit to the punishment, but not actively to co-operate.

[I have translated this Lecture less fully than most of the preceding parts; inasmuch as it appears to me, to be less valuable than the greater part of the Author's discussions. The question, How far Human Laws are binding upon the Conscience? is a very important one; but the solution here given of several of its branches is not very satisfactory. Perhaps Sanderson has too much attempted to make the answer depend upon the *Form* of the Laws, whereas it must also be greatly regulated by the *Matter.* A good citizen will, in ordinary cases, accept the Law of the Land as a rule for the guidance of his intentions, as well as his actions, in virtue of the general sympathy which he gives to the public legitimate actions of the State of which he is a member. But if the Law command something which is immoral, or contrary to the Law of God, he can no longer accept it as a Rule for his intentions, nor even for his actions, as Sanderson himself has taught, *Prælect.* v. And if, in such cases, it imposes penalties, he may be obliged to submit to the penalties, but he rejects the Law in his Conscience. Again: Human Laws are not universally binding on the Conscience, even when consonant to morality and religion, but only in

scivit lege constitutam, quamque culpa sua commeruit, *passive subeundam:* non item obligari *ad active cooperandum* in eadem. Et hæc de *Legum promulgandarum necessitate*, et de *Legum Pœnalium obligatione*, quæ ad legum *causam formalem* aliquo modo pertinere videntur, dicta sunto.

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those cases, which are properly regulated by Human Laws. The intention of the Legislator, even when moral and religious, does not bind the Conscience of the citizen in those matters about which there should be no legislation. Again: perhaps even when the Law is both moral and within the proper sphere of human legislation, too much stress is laid by Sanderson upon the intention of the original Legislator. The State, which accepts and enforces the Law, not the original maker of the Law, is really the authority which gives the meaning of the Law; and may, by subsequent practice, modify the original intention of the Lawgiver. Sanderson is especially bound to admit this, holding, (in opposition to the maxims of English Law,) that desuetude may abrogate a Law, (*Prælect.* VII. Sect. 22.) For if custom may entirely abolish the Law, it may, *à fortiori*, modify it.

Sanderson, in the greater part of these lectures, has handled the Aristotelian formulæ and classifications with great skill and to good purpose; but in the present lecture he seems to me to be less successful than usual in the use of these instruments.]

PRÆLECTIO NONA.

DE LEGUM HUMANARUM OBLIGATIONE EX PARTE *CAUSÆ FINALIS.*

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1 Tim. II. 2.

...*Pro Regibus, et pro omnibus qui in Sublimitate constituti sunt: ut quietam et tranquillam vitam agamus in omni pietate et honestate.*

I. DE *Legum Humanarum obligatione,* quod ad *Causas Materialem, Efficientem, Formalem* attinet prout res tulerat (fusius alicubi fortassis, alibi contractius, quam par erat,) egimus utcunque superioribus prælectionibus: superest ut ad ea quæ *ad Legum causam Finalem* pertinent dubia pertractanda pergamus porro. Sed antequam ad illa dubia dissolvenda perveniam, illud interim præmittendum est, et ut res indubia supponendum, *Legum ultimum finem esse Bonum communitatis,* sive pacem et tranquillitatem publicam. Probatur hoc *primo,* ex istis ipsis Apostoli verbis, *ἵνα ἤρεμον καὶ* 1
ἡσύχιον βίον διάγωμεν, ut vitam quietam et tranquillam agamus. Hortatur nimirum hic Apostolus, ut fiant cum privatim, tum vel maxime *in publicis coetibus,* (sic enim, cum optimis quibusque interpretibus, hunc locum intelligendum

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[The four kinds of Cause reckoned by Aristotle, the *Material, Efficient, Formal,* and *Final* Cause, though termed *Cause* with very different degrees of propriety, may often very conveniently be made the heads of a distribution of a subject for discussion: and this is exemplified by the use made of such an arrangement in this work. A great number of the most important moral questions concerning Human Laws are by this means brought into view in an orderly and lucid manner, reduced to general principles, and on such principles, the solutions given. In the preceding Lectures, Laws have been considered with reference to the three former kinds of Cause: we have now to consider them with regard to their *Final* Cause.]

1. We begin from the principle, that the Object and Ultimate End of Laws is the Good of the Community.

Proof *First;* From the words of the Apostle, 1 Tim. ii. 1, St Paul exhorts that both privately, and more especially in the public

existimo,) *obtestationes, preces, postulationes, et gratiarum actiones:* ut pro omnibus in universum hominibus *primo* (ex intuitu *Charitatis,* et in ordine ad *finem spiritualem,* felicitatem scilicet æternam in vita futura,) in quantum sunt omnes homines, aut *actu,* aut saltem *potestate,* membra *corporis* CHRISTI *mystici:* ita *pro Regibus aliisque suprema potestate præditis* in specie (ex intuitu etiam *Prudentiæ,* et in ordine *ad finem temporalem,* felicitatem scilicet externam in vita præsenti,) in quantum sunt præcipua membra *corporis politici.* A quorum potestate, *Lativa Legum et Executiva,* prout utramque recte aut secus administraverint, plurimum pendet reliquorum membrorum, adeoque totius corporis, vel *felicitas* summa, vel summa *infelicitas.* Proinde quum sit *Legumlatio,* ut jam [a]ante diximus, *Supremæ Jurisdictionis Politicæ actus præcipuus:* qui est supremæ illius *Jurisdictionis* totiusque Politici Regiminis, idem est et *Legum* ferendarum supre-
2 mus *Finis; bonum* scilicet *Communitatis.* Probatur *secundo,* a natura *Finis,* quasi demonstratione a Priori. Is est rei cujusque *Finis* in suo ordine *ultimus,* ad quem omnes illius rei *actus reducuntur,* tanquam ad *primum principium* sui regulativum; et *ad quem referuntur,* tanquam ad id *cujus gratia* ultimate fiunt: unde *causa Finalis* Aristoteli fere τὸ οὗ ἕνεκα appellatur. Sed omnes [b]*Legum actus a Bono Communi* regulantur, tanquam a primo suo *principio* et *Canone;* et *ad Bonum Commune* referuntur, tanquam ad *ultimum id cujus gratia* fiunt; ut patet discurrendo per singulos actus: ergo,

[a] [supra Præl. VII. Sect. 12.]

[b] Οἱ νομοθέται δίκαιον εἶναί φασι τὸ κοινῇ συμφέρον. Aristot. Ethic. Nic. Lib. VIII. cap. 11.

assemblies, *supplications, prayers, intercessions, and giving of thanks, be made;* as, *for all men,* as a matter of Charity, with reference to a spiritual end, their happiness in the life to come, inasmuch as they are or may be members of the mystical body of Christ; so especially, *for Kings, and all that are in authority,* as a matter of Prudence, with reference to a temporal end, our external happiness in the present life, inasmuch as *they* are the principal members of the political body. The happiness or unhappiness of the other members depends very much upon the administration of the legislative and executive power. And the legislative being the highest act of political jurisdiction, the making of laws must have the same end as political government, that is, the Good of the Community.

Second; That is the ultimate End of anything to which all the Acts of that thing may be reduced, as to their regulative principle:

etc. Quorsum enim res, aut bonæ *præcipiuntur*, aut malæ *vetantur*, aut *permittuntur* mediæ et neutræ? Aut quorsum hominibus, vel de Republica bene meritis *præmia* decernuntur, vel legum violatoribus constituta sunt *supplicia*, vel indiscriminatim utrislibet in judiciis *jura* dicuntur? quorum sunt illi, Legum *actus primi*, et per modum *Formæ:* isti *remotiores*, et per modum *Effectus*. Annon eo demum *fine*, ut Respublica in *pace* et *tranquillitate* floreat; et ut privati etiam cives *publicæ felicitatis* participio, pro suo cujusque modulo et mensura, gaudeant et fruantur? hoc est, uno verbo, ut *communi utilitati* inserviatur. Probatur denique *tertio*, a Posteriori, ex omnium 3
hominum sensu consensuque. Nam et qui [c]*justa decernunt* Legumlatores, revera videntur; et qui [d]*meditantur malum sicut Legem*, videri tamen cupiunt, in *ferendis legibus* non tam *suam*, quam *communem utilitatem* respexisse, εἴτε προφάσει, εἴτε ἀληθείᾳ, sive id sincere *intendant*, sive subdole *obtendant*, qui *Leges* aliis dicunt; propositum fuisse sibi in ferendis Legibus *bonum publicum*, profitentur utcunque universi.

II. Hoc ita jacto disputationis fundamento, Legum finem esse *Bonum Communitatis;* ad DUBIA pergo. Quorum esto PRIMUM, an sit *Legum humanarum* usus aliquis, saltem necessarius? Cui nullus foret in hac (*Dubiorum* dico,) classe concedendus locus, nisi hoc nobis facesseret negotium, *Anabaptistarum*, aliorumque cum ipsis juxta sentientium, vesanus error. Ex quorum principiis, (quum negent licere viro Christiano *magistratum* gerere, *bello liteve* contendere, *jurare*

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[c] Prov. viii. 15. [d] Psalm. xciv. 10.

but all the Acts of Laws may be reduced to the Common Good: therefore the Common Good is the ultimate End of Law.

[This is merely a reference of the case to the Aristotelian formula, according to which a *Power* shews itself by *Acts;* and of these, some are *Actus primi*, which manifest the *Form* or Essence of the Power; others are *Actus remotiores*, the Effects of the others. Rewards and punishments are of the former kind of Acts of the Legislative Power; judicial proceedings are Acts of the latter kind.]

Third; All Legislators either aim, or pretend to aim, at the Common Good; and thus, it is generally acknowledged as the right End of Legislation. This being settled, we proceed to

2. The FIRST DOUBT; Whether Human Laws are necessary.

We should have had no such doubt, if the Anabaptists had not denied that it was lawful for a Christian to be a magistrate, to go to law, to swear, and the like. Now without magistrates, courts of jus-

aut alteri juramentum deferre, aliaque consimilia:) consequi videtur, omnino nullam esse *Legum humanarum* necessitatem. Nec enim erit, sublata *Jurisdictione*, qui *Leges* ferat: Nec, sublatis *Judiciis*, qui reformidet.

> [e] *Quid tristes querimoniæ,*
> *Si non supplicio culpa reciditur?*
> *Quid vanæ sine moribus*
> *Leges proficient?*

Concidat necesse est *Directiva*, nisi ei accedat, quæ ipsam tibicinis in morem suffulciat, *Coactiva* Legum vis. Ratio autem dubitandi est: quod sufficere videatur *homini Gentili Naturæ Lex*, quæ dictat *Peccata esse vitanda, Nulli injuriam faciendam, etc.* Aut illa si forte deficit; sit tamen *homini Christiano* ad manum *Lex* altera sublimior et perfectior, *Lex* nempe *Fidei, Justitiæ, et Charitatis,* ab eo quem [f] *Jacobus* unicum agnoscit *Judicem et Legislatorem,* Christo servatore lata. Premit acriter, ut quidem mihi videtur, isthæc ratio *Novatores* nostros; e quorum puteis pleraque sua dogmata hauserunt *Anabaptistæ:* dum ex illo *Jacobi* testimonio colligunt, extra *unum Christum* nulli hominum fas esse *Leges Ecclesiasticas* condere. Quum enim nullo modo constare possit, vel ex vi verborum, vel ex totius illius perioches ordine et scopo, Apostolum ibi de *Ecclesiasticis* rebus legibusve magis locutum, quam de *Civilibus:* nisi videri malint præjudiciis agi, quam ratione duci, e duobus alterutrum faciant oportet; quorum penes ipsos optio esto. Scilicet, aut recta in *Anabaptistarum* castra concedant, tollantque e rebus humanis omnem omnino *legum*, etiam *civilium*, ferendarum potestatem: aut

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[e] Horat. Carm. III. 24. [v. 33, sqq.]

[f] Epist. iv. 12.

tice, and oaths, human laws cannot work. Laws cannot have a Directive Force if they have no Coactive Force.

The Reason alleged for the Doubt is, that for the Gentile the Law of Nature suffices; and at any rate the Christian has a better Law, the Law of Faith, Justice and Charity, made by the only Judge and Legislator, Christ, James iv. 12.

This argument presses hard upon our Innovators, (from whom indeed the Anabaptists have borrowed most of their arguments,) who infer from that text that it is not lawful for any one but Christ to make *Ecclesiastical* Laws. For the Apostle does not speak of Ecclesiastical any more than of Civil Laws. So that they must either join the Anabaptists, or allow the Prelates of the Church to make Ecclesiastical Laws.

Let them answer the Anabaptists as they may. We answer,

prælatis concedant, ut par est, *legum* etiam *Ecclesiasticarum* ferendarum potestatem.

III. Verum isti fratres nostri, ut abs *Anabaptistarum* telis se tuituri sint, nostra non multum interest: ipsi viderint. Nos facile respondemus, esse quidem *Legem Naturæ* cordibus inscriptam; esse et *Legem Christi* in Evangelio revelatam; utramque in suo genere *perfectissimam:* ita tamen ut sua constet *Legibus humanis,* non solum *utilitas* permagna, sed et *usus* etiam *necessarius.* Quia Leges illæ divinæ *generalia* tantum rerum agendarum *principia* continent: e quibus, ut ex suis principiis *conclusiones,* deducendæ sunt *regulæ* magis *speciales,* ad publicarum societatum et singularium hominum mores recte instituendos accommodæ. Neque vero omnino verendum est, ne *Legis Divinæ* perfectioni isto pacto quidquam derogetur. Non enim id agunt *Legum humanarum* conditores, ut locupletissimo illi *divinæ Legis* thesauro aliquid *addant* divitiarum: imo *promunt* inde potius eruuntque, quod sibi suisque judicant usui fore, et in commune utile. Ergo *Leges humanæ,* si quidem justæ sunt, nihil aliud sunt quam *Legis divinæ* ἀποφυάδες quædam et ἀποσπασμάτια: hoc est, *regularum generalium,* quas indeterminatas exhibent naturæ Lex, et Sacræ literæ, *determinationes particulares,* ad certorum populorum conditionem et utilitatem, pro locorum, et temporum ratione prudenter accommodatæ. Exempli gratia; Docet *Lex Naturæ* in genere, *nulli faciendam esse injuriam:* et *qui alteri injuriam fecerit, ad eam compensandam* teneri. Ast in specie, utrum is qui per vicinum agrum pecus plaustrumve egerit, *injuriam* vicino fecerit; et quæ sit debita pro ea injuria *compensatio;* non utique ex *Naturæ Lege,* sed ex

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3. That Human Laws are necessary in addition to the Law of Nature and the Law of Christ. For these Laws contain only general principles, which require to be determined by more special rules for the guidance of societies and of men.

Nor does this derogate from the perfection of the Divine Law; on the contrary, Human Laws are particular determinations of the general rules contained in the Law of Nature and of Scripture.

For example; the Law of Nature teaches generally that we are not to do wrong to any, and are to make compensation for wrong done. But whether I do wrong to a man by driving my cart over his field, and if so, what compensation I must make, is to be decided by the Civil Law.

Again: that the magistrate is to punish evil-doers, is taught by

civili jure statuendum est. Et *sceleratos* esse a magistratu *supplicio* afficiendos aperte docet sacra Scriptura, *Rom.* xiii. 4, et alibi. Sed quæ tandem *scelerum* genera punire debeat Magistratus; et quo *supplicii* genere, quave *mensura;* lege Dei nullibi definitum est: permissa nempe *Principibus* et *Legislatoribus* a Deo potestate, ut pro sua prudentia quod Reipublicæ commodum et salutare videbitur ipsi *Legibus* rite constitutis definiant. Sunt itaque *Dei Legislatoris,* et *Judicis* distincta, et sua cuique propria, jura sive munera, eaque optimo ordine sic disposita; ut *præcepta,* quæ Deus *generalia* mandavit et indeterminata, *Legislator* ad certas *personarum* et *actionum* species *determinet* et accommodet: *Judex* demum a *Legislatore* sic legibus determinata, ad singulares *personarum* et *actionum* causas cum effectu *applicet.* Ita ut, si *Legislator* Legem constituerit, quæ *præceptis Dei* non sit congrua, *Legem iniquam* tulisse; et si *Judex* in aliqua particulari causa sententiam protulerit, quæ constitutis a Principe *Legibus,* non sit congrua, *jus iniquum* dixisse censendus sit.

IV. Dubium Secundum est, an *Legislator* teneatur, si possit omnes omnium *virtutum actus* et officia *præcipere,* et omnia cujuscunque generis *peccata prohibere?* Aut si non possit *omnia,* an saltem teneatur quot possit utriusque generis præcipere, et prohibere? Ratio dubitandi est, quia ad proprium Legum finem, (quod est *Bonum commune,*) nihil videtur esse conducibilius, quam ut, quantum fieri potest, omnes cives sint *boni,* nulli autem *mali.* Ergo Legislatoris est, qui hunc unum

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Scripture, Rom. xiii. 4. What evil deeds he is to punish, and with what punishments, or in what degree, is nowhere defined by the Law of God; but is left to princes and legislators to settle by Laws.

And thus there are distinct and appropriate spheres of action of God, the Legislator, and the Judge. God delivers general precepts; the Legislator determines them to special kinds of persons and actions; the Judge applies them effectively to special cases of persons and actions.

And thus if the Legislator makes a Law contrary to the precepts of God, it is an unrighteous Law: if the Judge pronounce a sentence contrary to the Law of the Prince, it is an unrighteous sentence.

4. The Second Doubt is; Whether the Legislator be bound to command, if he can, all acts of virtue and duties, and to forbid all sins: or if he cannot all, as many as he can.

The seeming Reason why the Legislator should do this, is that it is for the common good that all the citizens should perform duties and avoid sins. And so Paul, Rom. xiii. 3, 4, and Peter, 1 Pet. ii. 14, seem to suppose the magistrate to act.

sibi *finem* propositum habere debet, *Commune Bonum,* procurare quantum in se est, *præcipiendo* omnes omnium *virtutum actus,* ut omnes cives sint *boni,* et *prohibendo* omnia *peccata,* nequi sint *mali.* Id quod postulare videntur a *Magistratu politico* uterque magnus Apostolus: *Paulus, Rom.* xiii. 3, 4, *Fac bonum, et habebis laudem: sin malum feceris, time; quia vindex est in iram* τῷ τὸ κακὸν πράσσοντι, *ei qui malum fecerit,* i. e. cuivis homini qui quodvis malum fecerit; et *Petrus,* 1 *Pet.* ii. 14, εἰς ἐκδίκησιν μὲν κακοποιῶν ἔπαινον δὲ ἀγαθοποιῶν, *in vindictam male agentium et laudem bene agentium,* i. e. omnium male agentium, et omnium bene agentium. Utrobique enim *indefinite* enunciatum æquipollere *universali,* et Regulæ Dialecticorum consonum est, (in *materia* scilicet *necessaria,*) et voluntati Dei, qui Magistratui προσωποληψίαν interdixit.

V. Pro responsione dico *primo* et generaliter, *Legislatorem* teneri pro virili sua parte procurare, ut omnes cives sint *boni,* nulli autem *mali;* et per consequens *præcipere* omnes virtutum actus, et omnia peccata *prohibere:* quantum exigit ratio *principii* ex quo, et *finis* propter quem operatur; ulterius vero non teneri. *Principium* enim et *Finis,* in operationibus omnium sive naturaliter sive libere agentium, adæquata sunt *mensura actuum* omnium intermediorum: in quantum *actus* illos conformes esse decet et proportionatos, cum *principio* a quo procedunt, tum *fini* in quem tendunt. Actus igitur *præcipiendi, prohibendi,* ceterique, in quibus consistit *Legumlativæ jurisdictionis* exercitium, proportionati sint oportet et *principio* suo, in cujus virtute fiunt; *potestati* scilicet ὑπερεχούσαις ἐξουσίαις a Deo concessæ: et fini suo, in cujus gratiam fiunt; *bono* scilicet *Communi.* Debet proinde Legislator eatenus *præcipere, prohibere, permittere,* ceteraque quæ sui sunt muneris præstare; quatenus convenit *potestati* sibi a Deo concessæ, et commissæ sibi a Deo *communitati* expedit.

VI. Sed *generalia* hæc sunt, et indefinita. Ut igitur *dubio* proposito satisfiat, addatur aliquid oportet quod sit

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5. But we say in Reply, *First,* and generally; The Legislator must command, prohibit, permit, so far as, and no further than, is suitable to the power granted to him, and to the Community which he administers.

6. *Secondly:* The power of the Legislator does not extend to internal acts, (Will, Love, Hate, Grief, and the like,) but only to external acts such as are performed by the bodily organs. Hence the legis-

magis *particulare,* quod huic tamen generali velut fundamento nitatur. Dico itaque *secundo,* actus virtutum et vitiorum, quum sint alii *Interni;* cujus generis sunt actus voluntatis eliciti, *Velle,* et *Nolle,* motus affectuum, ut *amare, odisse, dolere, etc.;* et siquæ sint aliæ cogitationes et intentiones cordium et mentis: alii *Externi,* cujusmodi sunt omnes actus *voluntatis* imperati et indeliberati *Affectuum* motus, qui per *organa corporea* exercentur; ut *videre, loqui, ferire, rapere* aliique innumeri: potestatem legislativam circa *actus externos* versari solum, non item *internos.* Potest ergo legislator, *præcipere* solutionem debiti, restitutionem furti, cultum Dei externum; *prohibere* item furtum, adulterium, homicidium, blasphemiam, etc. At non potest *præcipere* dilectionem proximi, fiduciam in Deo, contemptum mundi; nec *prohibere* cupiditatem rei alienæ, impudicas cogitationes, odium proximi, Atheismum cordis. Ratio est: quia statuere de *actibus internis,* nec *principio* ex quo, nec *fini* propter quem operatur *Legislator,* proportionatum est. Deus enim Opt. Max. *externi* tantum *hominis* regimen Magistratui permisit: *internorum actuum* cognitionem et judicium, *cordiumque* inspectionem et dominium, uni sibi reservavit. Idem enim est *Legislator* et *Judex,* ut ex laudato nobis aliquoties *Jacobi* testimonio ante ostendimus: et omnino inefficax esset ad intentum *finem* suum consequendum *legumlativa potestas,* si *directiva* tantum esset, non item *coactiva.* Quum ergo
1 non possit *imprimis forum externum* de *actibus internis*
2 cognoscere et judicare; et stultum esset *secundo* id lege lata *præcipere* vel *prohibere,* quod, ubi peccatum fuerit, *punire*

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lator may command payment of a debt, external worship of God; may prohibit theft, adultery, homicide, blasphemy: but he may not command the love of our neighbour, trust in God, contempt of the world; nor prohibit covetousness, lustful thoughts, want of charity, atheism of the heart.

The reason is, that external acts only are left to the disposal of the magistrate by God; he has reserved to himself the knowledge and judgment of internal acts. For

(1) The external forum cannot take cognizance and pronounce judgment respecting internal acts.

(2) It is absurd to command and prohibit when you cannot punish.

(3) The direction of external acts is sufficient for the external happiness of the State.

(We see here how superior is the Law of God and Christ, to the Law of man. See the passages quoted.)

nequeas; et actuum denique bonorum *externa* operatio, ma- 3
lorum *externa* declinatio, sufficiat ad *externam* Reipublicæ felicitatem: sequitur *legumlatorem*, nec prudenter posse, nec de jure debere, *internos actus* aut virtutum *præcipere*, aut vitiorum *prohibere*. Quo nomine, ut et aliis plurimis, infinities superat *leges humanas* vel præstantissimas *lex Dei et Christi;* quæ veritatem, puritatem et sinceritatem exigit in intimis præcordiis, et primos levissimosque pravæ voluntatis inordinatos motus cohibet, prohibetque; et *meditata* scelera tam punit quam *perpetrata*. Ideo Davidi dicitur *Dei lex perfecta et emaculata* [g]*Psalm.* xix. et alibi non semel. Estque lex ipsa Christi, qualis et ipse ejus lator describitur *Heb.* iv., [h]*Sermo vivus et efficax, penetrantior omni gladio ancipiti, pertingens usque ad divisionem animæ et spiritus, compagum quoque et medullarum, et discretor cogitationum et intentionum cordis.*

VII. Dico *tertio*, posse leges humanas *de jure præcipere* omnes omnium virtutum *actus externos*, et externa omnia peccati opera *prohibere;* sed *de facto* non posse. Ratio prioris membri est: quia nullus est virtutis vitiive *actus externus*, de tota sua specie et natura ita comparatus, ut non possit quandoque ejus *præceptio* vel *prohibitio* esse, pro rerum et temporum conditione, ordinabilis in *bonum publicum*. Ergo non *justitiæ* proprie dictæ solum, (quæ nonnullorum sententia est,) sed et ceterarum *virtutum* quarumcunque *actus*, possunt esse debita *legis materia* sive *objectum*. Quod et *Aristotelem* alicubi observasse memini; et

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[g] [vers. 7, sqq.; conf. Præl. II. Sect. 12; Præl. V. Sect. 26.]

[h] [vers. 10.]

7. *Thirdly;* Human Laws may, by right, command all external right actions, and forbid all external wrong acts; but in fact, they cannot do it.

The Reason of the former clause is, that there is no kind of external act such that the command or prohibition of it may not, at some time, affect the public good. And therefore not acts of justice only, as some hold, but of all the virtues, may be the material of Human Laws. So we may have Laws against Cowardice, as in the army; or against Intemperance, as in the case of sumptuary Laws.

The Reason of the latter clause is, that the acts, both of virtue and of sins, (even as to their kinds, still more as to their degrees,) are so numerous and variable that if the legislator were to provide respecting all, the mass of laws would be an intolerable evil.

instantias etiam (si recte memini) dare in actibus *Fortitudinis* et *Temperantiæ*. Ut si *lege militari* sanciatur, nequis militum audeat in prælio *fugere*, aut *arma abjicere:* vel si *lege sumptuaria* cohibeatur *conviviorum luxus;* aut modus statuatur, quem nemini civium in *vestitu, famulatu, supellectili* excedere liceat. Ratio posterioris membri est: quia tanta varietas est, (etiam quoad ipsas *species,* multo etiam magis quoad *gradus,*) tum officiorum *virtutis*, tum operam *peccati;* ut si de singulis cavere legislatores curarent, ipsa *legum multitudo* gravamen esset Reipublicæ non ferendum.

VIII. Dico *quarto,* legislatorem ne ad illud quidem teneri, ut omnia quæ potest mala *prohibeat,* vel bona *præcipiat.* Sufficit enim, utriusque generis graviora quæque *legibus* contineri; et quæ sunt cum insigni aliqua *utilitate publica* ita conjuncta, ut nisi de eis aliquid statueretur, sequi necesse esset grave aliquod malum, quod toti Communitati esset valde incommodum. Neque enim inter cupiditates carnis, illecebras mundi, Satanæ præstigias, ingenia hominum tam varia et omnigenum vitiorum feracia *Rempublicam Platonicam* vel *Utopicam* somniare fas est. Præclare nobiscum agi putandum est, si non hæreamus in ultima (ut dici solet) *fæce Romuli.* Necesse est itaque in omni Republica aliqua *mala* non *prohiberi,* sed *tolerari;* multa *bona* non *præcipi* sed cujusque arbitrio *permitti;* utriusque generis plurima legibus *præteriri,* et in medio relinqui: ne ex unius mali succidendi intempestivo studio, succrescant fortasse alia mala *plura* aut *majora.*

IX. Dubium tertium, de *Intentione Legislatoris:* An et quatenus requiratur ad effectum *obligandi?* Quod est quærere, si princeps nullo justitiæ aut *publici boni* intuitu, sed *odio* aut *gratia* privata, sed *ambitione* et mera dominandi

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8. *Fourthly;* The Legislator is not bound to command all the right acts and to prohibit all the wrong which he can. It is enough if he deal with the graver of each kind. We do not live in an imaginary State, like Plato's Republic. Some evil things must be tolerated; some good things must be left open; most things of both kinds must be passed by unmentioned, for fear of incurring worse evils.

9. The Third Doubt is, How far a right Intention in the Lawgiver is requisite to make the Law obligatory: for instance, if the Prince make laws with no regard to justice, but through hatred or private favour, ambition, avarice, or the like; are the subjects bound to obey?

We answer, *First:* They are, if there be no other impediment:

libidine, sed *avaritia* aliave prava impotentis animi cupiditate ductus, *legem* tulerit subditis; an illi ad parendum *legi obligentur* in conscientia? Facilis responsio, *obligari;* si non sit aliud impedimentum: id est, si qui legem tulit habuerit *legitimam potestatem,* et lex ipsa sit alias *justa,* pro more gentis legitime *rogata,* et sufficienter *promulgata.* Dico igitur *primo,* sicut in artificialibus non est semper idem *finis operis* et *operantis;* ut in domo ædificanda, *finis operis* (id est *domus,*) est, ut sit commoda domino habitatio; *finis operantis* (id est *Architecti,*) est, ut ipse ex labore lucrum percipiat: ita in Republica fieri posse, ut *Legislator* intendat *commodum proprium,* et ipsa tamen *lex* tendat in *bonum commune.*

X. Objicies fortasse, *finem* sive intentionem minus rectam semper vitiare *opus:* ergo et *Legislatoris* pravam intentionem vitiare *legem,* quod est ipsius opus. Ut huic objectioni occurratur, dico *secundo,* intentionem malam semper vitiare *opus,* prout opus dicit *actionem operantis;* non semper vitiare *opus,* prout opus dicit *effectum operationis.* Differunt enim non parum duo ista inter se, etsi eodem *operis* nomine utrumque soleat appellari, *Actio* scilicet ipsa, et *actionis* ἀποτέλεσμα: prorsus ut ποίησις et ποίημα, *effectio* et *effectus.* Architecti *opus* dicitur, et ipsa *ædificatio* domus, et ipsa *domus* ædificata: etsi sit illa *actio transiens,* hæc autem *res* post finitam actionem *permanens.* Intentio ergo prava vitiat *opus Legislatoris,* id est, suam ipsius legem condentis *actionem;* quæ ob

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that is, if a person having legitimate authority makes with due form, and duly promulgates a law otherwise just. For as in works of art, the object of the Work and of the Workman may be different; (as in building a house, the object of the Work is to be a commodious habitation; the object of the Architect is to gain money by his art:) so in the State, the Lawgiver may aim at his own advantage, and yet the Law may tend to the Common Good.

10. It may be objected that a wrong End vitiates the Work, and that therefore the wrong intention of the Legislator vitiates his work, which is the Law.

To this we answer *Secondly,* that *Work* is used in two senses, as the action, and as the result of the action. The Architect's Work is the edification of the house, and it is the edifice. The Legislator's Work is the act of making the Law, and it is the Law made. A bad intention vitiates the former, and makes it a bad action; but it does not vitiate the latter and make it a bad Law, if it tend to the common good: just as a judgment which is legally right, is not a bad judgment, though delivered by the Judge through favour or dislike towards the parties.

defectum *boni finis* non caret peccato: non tamen vitiat *opus Legislatoris*, id est, *legem* ipsam ab eo conditam, si quod lege imperatur sit referibile in *bonum commune*. Sicut valida est, non obstante prava *Judicis* intentione, sententia ex *gratia* vel *odio* lata, modo sit ipsa *sententia* per se considerata non *injusta*. Potest enim, ut recte [i]*Augustinus, ex libidine imperanti sine libidine obtemperari.*

XI. Dico *tertio*, supposito quod lex non mala tantum intentione lata, sed et *publico inutilis*, imo et aliquantulum *noxia* sit; obligari tamen subditum ad parendum *legi* justa auctoritate latæ, modo sit ipsa *materia legis*, sive *res imperata*, istiusmodi, ut possit sine peccato præstari. Ratio est, quia debet unusquisque quæ suarum sunt partium ea sedulo curare; in eis quæ alienarum sunt, non esse anxie et religiose sollicitus. [k]*Unusquisque enim suum portabit onus.* Si *Legislator* officio suo defuerit, quid ad te? *Tolle quod tuum est, et vade.* De *intentione* sua, rectane fuerit an secus, viderit ipse; qui omnium *actionum*, etiam et *intentionum* suarum redditurus est Domino suo rationem: tu videris, nisi parueris, ut sis eidem Domino *inobedientiæ* tuæ rationem redditurus.

XII. Dubium quartum, de *legum mutatione*, si videantur Reipublicæ *inutiles* aut *noxiæ*: An et quatenus earum *mutatio* sit vel a *principe* tentanda, vel a *populo* postulanda et urgenda? Ratio dubitandi est. Ex una parte, quia in *corpore civili* haud minus quam in *naturali*, omnis [l]*mutatio* (præser-

[i] [de Libero Arbitrio, Lib. I. cap. v. Opp. Tom. I. p. 572. B. ed. Bened.]

[k] Gal. vi.

[l] Μεταβολὴ πᾶσα φύσει ἐκστατικόν: Aristot. Phys. Lib. IV. [cap. 13, Opp. Tom. I. p. 222, ed. Bekker.]

11. We say, *Thirdly*, that even if the Law be not only made with an evil intention, but be in some measure a mischievous law, still the subject is bound to obey the law, when made by due authority, provided the matter of the law, the thing commanded, be such as can be done without sin. The Reason is this: that each person ought to take especial care of that which belongs to his own business; and not to be too anxious and scrupulous in matters which are the business of others. "Every man shall bear his own burthen," Gal. vi. 5. If the Legislator is wanting in his duty, what is that to thee? Take that thine is, and go thy way. As to his intention, whether it is right or otherwise, let *him* look to that; he will have to render an account to his Lord, of his actions and of his intentions too. And thou, if thou obey not, wilt have to render to the same Lord an account of thy disobedience.

12. The Fourth Doubt is, concerning the Changing of Laws, if

tim si aut *subita* sit, aut *magna*) periculosa est: ex altera parte, quia Reipublicæ interest ut *leges* sint *moribus et temporibus* accommodæ; hisce proinde mutatis, ut et illæ mutentur. Pro responsione dico *primo*, certum esse *leges mutari* posse, interdum et debere. Nam et antehac *immutatæ* sunt cum magna utilitate publica: ergo et nunc *immutari* possunt, et posthac poterunt, si res postulet, et ex usu sit Reipublicæ id fieri. Quod enim olim *licuit*, cur non et olim *licebit?* Novi ad hæc subinde emergunt *casus*, nova succrescunt indies *mala*, nova *incommoda;* quibus nisi novis occurratur *legibus*, nullum erit remedium. Et quærunt omnes, inquit [m] *Aristoteles, οὐ τὸ πάτριον, ἀλλὰ τἀγαθόν.* Et si *legem* olim propterea *ferri* expedivit, quod tunc visa est *Reipublicæ utilis;* postquam ex mutata temporum et morum conditione comperta est *Reipublicæ inutilis,* cur non expediat eam nunc *tolli?*

XIII. Dico *secundo;* legum, etiam particularium, *immutationem* non carere periculo: ideoque non esse nisi ex gravi admodum et evidenti necessitate tentandum. Varias rationes adducit *Aristoteles*, acute et breviter, ut solet, (apud eum videte,) in his, *tres* præcipuas hasce. [n] *Primo ἀσθενῆ* 1
ποιεῖ τὴν δύναμιν. Derogant nimirum plurimum et *Legum*

[m] Aristot. Polit. Lib. II. cap. viii. [cap. v. Sect. 12, ed. Stahr.]

[n] [ubi supra, Sect. 14.]

they appear to be useless or mischievous to the State: namely, whether and how far such change may either be attempted by the Prince, or demanded and urged by the People.

The Reasons on the one side and on the other, are; Against change, that change, especially sudden or great change, is dangerous, whether in the natural or in the civil body: and For change, that laws should be suited to the times and manners of the people, and therefore, should change when these change.

In reply, we say *First,* that certainly laws may be changed, and sometimes ought to be. Laws have become what they are by being changed, and may in like manner be changed again. New cases arise, new evils shew themselves, which can be remedied only by new laws. If a law was made because it was useful to the State; when, by change of times and manners, it becomes useless, why should it not be unmade?

13. We say *Secondly,* that the change, even of single Laws, is not without danger, and therefore should not be undertaken except on grave and evident necessity. Aristotle gives several reasons for this, of which the three principal are,

auctoritati, et *latoris*, crebræ mutationes. Sicut *levem* et infirmi hominem judicii existimamus eum, qui nulla solida et
2 evidenti ratione permotus facile *mutat* sententiam. *Secundo*, τὸ ἐθίζειν εὐχερῶς λύειν τοὺς νόμους φαῦλον, ([o] *Aristotelem* iterum auditis.) *Petacem* facit populum, ne dicam *petulantem*, (res ipsa clamat, experti sumus nimirum jamdiu,) et cuncta moventem, si *Legislatorem* facilem hac ex parte, et ad vota libidinemque populi jure suo cedentem repererint. Reprehendit igitur jure merito et graviter, [p] ibidem summus Philosophus legem *Hippodami* cujusdam *Milesii* Legislatoris; εὐόφθαλμον illam quidem, primo aspectu speciosam satis, et plausibilem vulgo, ut *qui aliquid utile civitati invenirent; publico præmio afficerentur;* sed si penitius intueare, nec *prudentem* omnino, nec *salutarem*. Quid enim fere excogitari potest ad publicas res turbandas opportunius, quam quod *proposito præmio* invitentur homines factiosi, vafri et turbulenti ingenii, εἰσηγεῖσθαι νόμων λύσιν ἢ πολιτείας, ὡς κοινὸν ἀγαθὸν, ut sub specie *boni publici*, non eversionem modo *legum* inducere, sed et totius *civilis administrationis* formam, sub incudem revocatam, et in novam ideam pro suo lubitu refictam, civitati obtrudere studeant. *Philosophumne* obsecro videmini vobis audire suis temporibus illustrem; an *vatem* potius eorum qui nunc sunt morum hominumque præscium ac prænuncium?
3 *Tertio* quum *Legum immutatio* tollendi præsentis alicujus *incommodi* gratia instituatur; et fieri possit, ut ex ista *immutatione* suboriantur (imo vix fieri possit ut non suboriantur,) et emergant tandem, utut fortassis occulta initio, plura et [q] graviora *incommoda:* [r] ἐατέον ἐνίας ἁμαρτίας, inquit idem gra-

[o] [ubi supra, Sect. 13.]
[p] [Sectt. 4, 10.]
[q] *Graviora inferre vulnera, dum levioribus mederi desideramus.* Ambros. de Offic. Ministr. [Lib. II. cap. xxi.]
[r] [Aristot. ubi supra, Sect. 13.]

1°, It makes the government weak: as a man of changeable purpose is held to be weak.

2°, It makes the people fond of change; makes them, indeed, (as *we* have seen), importunate and impatient in their demands, when they find the Legislature yielding to them. Hence Aristotle blames, as mischievous though specious, (οὐκ ἀσφαλὲς, ἀλλ' εὐόφθαλμον ἀκοῦσαι μόνον,) a rule introduced by Hippodamus into his Imaginary Republic; that public honour should be assigned to any person who could invent any useful novelty (in law). Such a rule would, Aristotle says, tend to produce, under the pretext of improvement, great confusion, disturbance of all law, and subversion of the commonwealth; factious and

vissimus Philosophus; omnino satius esse judicans, aliqua *incommoda*, eaque non levia, in Republica *tolerare* et perferre; (quod idem et de *Ecclesia*, quæ et ipsa *Respublica* quædam est, statuendum est:) quam obtentu *Reformationis* sive *Ecclesiasticæ sive Politicæ*, vetera instituta sollicitare, leges refigere, *τὰ ἄνω κάτω* sursum vorsum omnia versare, et versando pervertere. Longe alia mens fuit prisci seculi prudentium virorum, quorum hæc et hujusmodi fuisse dictata accepimus. Ἀρχαῖα ἤθη κρατείτω. *Malum bene positum non movendum. Imperiti medici est, pejus malo remedium adhibere.*

XIV. Dico *tertio*, Legum *immutationem*, etiamsi ex gravi et evidente causa videatur esse necessaria, non esse tamen a *populo*, invito *Principe*, tentandam, sed ab eo modeste petendam et patienter expectandam. Quod ut ex *Capitis et Membrorum* analogia colligi potest, (quam enim et monstri simile esset, et toti corpori exitiale, si *brachia, pectus, pedes,* capitis sibi vel *locum* arriperent, vel *officium?*) Sic est in iis, quæ de *Causa Legum Efficienti* haud ita pridem disseruimus, cumulate satis demonstratum. Nimirum civilis *Jurisdictionis actum præcipuum* non posse exerceri nisi ab eo qui totius *communitatis caput* et princeps est: Legum proinde *constitutionem, abrogationem,* et quamcunque *immutationem,* quæ sunt omnes *summæ Jurisdictionis* actus e præcipuis, non posse *ad populum* pertinere, (nisi ubi *populus Princeps* est, ut in statu *Democratico;*) sed ad eum solum qui toti com-

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turbulent men trying each to shape the state after his own idea. We might imagine this a prophecy of our times.

3°, When a change of the Laws is proposed in order to remove some inconveniences, and it is possible, or highly probable, that greater inconveniences would arise from the change, we must let some faults alone, as Aristotle also says. It is better to tolerate some evils in the State, (and so, in the Church which is a sort of State,) than to throw everything into confusion on pretence of Reformation. And to this effect are many received proverbial expressions.

14. We say *Thirdly;* Although a change of the Laws be, for grave and evident cause, necessary, it is not to be attempted by the People contrary to the will of the Prince, but to be modestly asked, and patiently expected from him. This appears from the analogy of the body: it would be monstrous if the arm or foot were to aspire to be the head. The office of legislation belongs to the Sovereign; and the Sovereign (except in a Democratic State) is the Prince. In a Monarchy the King is autocratic in such matters. The office of the

munitati *cum summo imperio* præest; hoc est, in statu saltem *Monarchico*, ad unum *Regem αὐτοκράτορα* et simpliciter ὑπερέχοντα. In tam gravi negotio, hæ sunt *populi* partes: justa *gravamina* sua (siqua sunt) aperte et sincere, sed cum omni debita reverentia *Principi* exhibere; quibus remediis præsentibus malis commodissime occurri posse censeant fideliter *proponere;* supplices *rogare*, ut votis *subditorum*, prout ipse ea Reipublicæ salutaria et in commune utilia judicaverit, annuere dignetur, et eorum postulata grata rataque habere; is denique si rogatus usque recusaverit, *absistere* in id tempus a proposito, rebusque et legibus præsentibus *contentos esse:* idque sine omni *obmurmuratione*, nedum *vi;* quoad is aut *amicorum* precibus et hortatibus permotus, aut *rationum* momentis perductus, animi pertinaciam illam remiserit, et *subditorum* postulatis annuerit.

XV. Dubium quintum. Quandoquidem non *Legum* modo, sed et totius *politici regiminis* finis est *bonum commune;* An liceat, ex aliquo boni communis sive obtentu sive intuitu, præsentem *regiminis formam* immutare, aut ejusmodi immutationem attentare: et quatenus id liceat, et quibus. Exempli gratia, liceatne populo *regimen Monarchicum* mutare in *Aristocraticum*, vel *Democraticum;* aut e contra? Dubium *periculosæ plenum aleæ;* his præsertim temporibus, et moribus. Esto ergo hic suum cuique liberum judicium: Ego quid mihi *sentiendum* videtur sine fuco exponam; *assentiendi* nulli legem impono. Suppono tantum, quod a plerisque conceditur, nec facile negari potest, *Monarchiam hæreditariam*, sive *Regnum successivum*, inter omnes *Rerumpublicarum formas*

People is, to lay its grievances, if there are any real ones, openly and sincerely, but with all due reverence, before the Prince: to propose remedies: to ask his assent to them: if he refuse, to desist for the time, and to remain content, without murmuring, and still more, without violence, till the Prince is induced to change his mind.

[This is the same view of a Monarchical Constitution which Sanderson presented before, *Præl.* vii. Sect. 5; but, as we have already said, this is not the English Constitution, even of the Stuart period.]

15. The Fifth Doubt. Is it allowable to change the form of Government; Monarchy, for instance, into Aristocracy or Democracy, or *vice versa?*

This, Sanderson says, is a question ticklish and dangerous at all times, and especially, now. Let opinions be free; I will deliver mine, imposing it on no man. I assume, what is granted by most, that

esse ἁπλῶς et absolute præstantissimam, et duabus reliquis multis nominibus anteponendam. Hoc posito, Existimo *primum*, posse Populum (si ipsis visum fuerit) *regimen Democraticum* in Aristocraticum vel Monarchicum commutare. 1
Imprimis, quia videtur esse *commutatio in melius*. Accedit quod in *Democratia* summa Imperii est penes ipsum *Populum;* ita ut possit *populus* de se prout sibi libitum est pro suo jure statuere, dummodo nulli fiat injuria. Injuriam denique a populo istiusmodi imperii immutatione nulli mortalium fieri, certissima res est: non alteri cuiquam, quia *jus non habenti* non fit injuria; nec ipsis sponte mutantibus, quia [8] *volenti* non fit injuria. Existimo *secundo*, ab omnes easdem 2
rationes, posse Optimates *regimen Aristocraticum* in Monarchiam commutare: nam et mutatio est *in melius*, et ipsi *jus* habent hoc faciendi, nec fit cuiquam eo facto *injuria*. An item ipsis liceat *Aristocratiam* in *Democratiam* convertere, non ita facile dixerim: quia licet et ipsi *jus* habeant faciendi, et res ipsa citra cujusquam *injuriam* fieri possit, non tamen videtur esse ista *commutatio in melius*. Existimo *tertio*, posse commutari *Monarchiam Regni Electivi* in aliam 3
(fortasse quamlibet) regiminis formam, præsertim vero in *Regnum hæreditarium* sive successivum: idque ob easdem fere rationes: Non tamen id fieri debere, *primo*, nisi regno per mortem ultimo regnantis vacante, (alias enim *præsenti Regi* fieret *injuria ;*) nec *secundo*, nisi ex conjuncto consensu

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[8] ἀδικεῖται δ' οὐδεὶς ἑκών: Aristot. Ethic. Nic. Lib. v. [cap. 15, ed. Bekker.]

a Hereditary Monarchy is the best form of Government. I then think,

First, That the People may, if they please, change a Democratic into an Aristocratic or Monarchical Government.

1°, Because it is a change for the better.

2°, Because it does wrong to no one; the People, being willing, have a right to do so.

Secondly; The Members of an Aristocracy may change the Government into a Monarchy.

For the same Reasons.

Whether they may change it into a Democracy, is not so clear, for the first Reason does not apply.

Thirdly; An elective Monarchy may be changed, perhaps into any form, but especially into an Hereditary Monarchy.

For the like Reasons; but this may not be done except, 1°, the throne be vacant; for otherwise injury would be done to the reign-

procerum Regni et populi, earumque personarum quæ jus
4 habent eligendi. *Existimo quarto, Monarchiam hæreditariam,* in regnum Electivum, aut alterius regiminis quamcunque formam, non posse legitime commutari: vel a sola *plebe;* vel ab universo *populo subditorum,* hoc est, a plebe et proceribus junctim; vel etiam a *toto populo* in maxima sua latitudine, id est, *a plebe, proceribus et Rege* simul consentientibus: Nisi forte sicubi ita penitus defecerit *Regalis prosapia,* ut nemo supersit, qui Regnum sibi ut jure hæreditario debitum vindicare possit. Cujus sententiæ rationes
1 sunt, *Primo,* quia ex nostro supposito ista esset *commutatio*
2 *in deterius.* *Secundo,* quia istiusmodi commutatione legitimo
3 hæredi fieret *injuria.* *Tertio,* quia videtur non ipsa commutatio tantum, sed et omne ejus desiderium et conatus, verbis illis Salomonis adversari, *Prov.* xxiv. 21, *Fili mi, time Deum et Regem; nec sit tibi rei quidquam cum iis qui novis rebus student.* Quod tamen ante dixi, nunc iterum repeto; me non hæc ita dicere ut affirmem, aut litem super hac re cuiquam moveam si aliter sentiat.

XVI. Dubium sextum. Quomodo sit intelligendum id quod dici solet, *Salus populi Suprema Lex?* Ratio dubitandi ex eo oritur quod initio proposuimus et probavimus,

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ing king: [He overlooks the case in which the monarchy is made hereditary in the reigning king's family.]

And except, 2°, the Nobles and the People agree to make the change.

Fourthly; A Hereditary Monarchy cannot legitimately be changed into any other form; either by the People alone; or by the People and Nobles; nor even by the People, Nobles, and King, all consenting: except the Royal Race utterly fail.

1°, Because this would be a change for the worse.

2°, Because wrong is done to the heir.

3°, It is contrary to Scripture. Prov. xxiv. 21, "My son, fear thou the Lord, and the King, and meddle not with them that are given to change."

"But, as I have said before, I repeat, that I do not say this as wishing to enter into controversy with any one who denies it."

[The abolition of the Monarchy and of the House of Peers, in February 1649, was about a year and a half after the delivery of this lecture.]

16. The Sixth Doubt; How we are to understand the common saying, The Safety of the People is the supreme Law?

The reasons of this Doubt arise from what has been said already,

Legum finem esse *Bonum publicum.* Hinc sequi videtur, ex una parte, a *Legum* stricta observantia pendere *Reipublicæ salutem;* ex altera parte, *saluti Reipublicæ* cedere debere omnium *Legum* observantiam. Hinc etiam fidenter satis, nec minus perverse colligunt, qui intra paucos hosce annos novam una cum *Theologia Politiam* in *Ecclesiam et Rempublicam* invexerunt, *Libertatem*, hoc est, *Jus subditorum*, (sic enim illi *Populi salutem* interpretantur,) et *Regum prærogativis et Legum Sanctionibus* anteferendam esse; et proinde posthabendas præ illa omnem et potestatem *Regum* et *Legum* auctoritatem. Pro solutione *dubii*, sciendum est, totam fere hac in re deceptionem ex *æquivocatione*, quæ in terminis latet, ortam esse; præsertim in illo *Populi* vocabulo. *Populus* enim, quum sit *corpus* quoddam *Metaphoricum*, dupliciter accipi potest, sicut et ipsum *corporis* vocabulum: *Collective* scilicet prout significat totam *Reipublicæ communitatem*, id est, Regem et subditos simul; et *Discretive*, prout significat *subditos* præcise, et seorsim a Rege, ut cum dicimus, *Rex et Populus.* Sicut *Corporis* vocabulo intelligenda veniunt aliquando *reliqua membra* simul cum capite, ut cum dicimus *Animam et Corpus;* aliquando *membra reliqua* præcise et excluso capite, ut cum dicimus *Caput et Corpus.*

XVII. Dico igitur *primo*, maligne et pessimo consilio detorqueri id, quod de *populo* in priore sensu dictum est, ut

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that the End of Laws is the public good. Hence it appears to follow, on one side, that the safety of the People depends on the strict observance of Laws; on the other, that the observance of Laws ought to yield to the safety of the State.

Hence, too, it has been very confidently, but very perversely inferred, by our recent Innovators in Church and State, that Liberty (which they hold to be the proper interpretation of the *Safety of the People,*) is to take precedence both of the Prerogatives of the Sovereign and the Sanctions of Law.

In order to solve the Doubt, we must note the ambiguity of the word *People. The People* may be taken to mean, either collectively, the whole Community, King and Subjects together; or distinctively, the Subjects as opposed to the King: as *Body* sometimes means the whole material frame of man, as when we speak of the *Soul and the Body;* and sometimes a part of that frame, as when we speak of the *Head and the Body.*

17. *First;* The Maxim is true in the former sense, of *The People,* but is perversely wrested and applied in the latter sense.

He who says that the Safety of the People, that is, of the Subjects,

accommodetur *populo* in posteriore acceptione. *Salutem populi*, id est, totius *Communitatis*, ut ea vox *Regem* una cum *subditis* complectitur, *supremam Legem* esse, nemo sanæ mentis negaverit: at *salutem populi*, id est, *subditorum* excluso Rege, supremam esse Legem quis dixerit, nisi aut *fatuus*, aut *impostor?* *Fatuus*, si ipsi sibi sic dicenti fidem habeat; si non habeat, *impostor*. Sed enim quisquis ipsius *Aphorismi originem* attentius inspexerit, lubentius concessurum arbitror, de salute *Principis* præcise intelligi debere, quam de salute *Subditorum* præcise. Scilicet a *Romanis* ad nos devenit celebre hoc dictum, illis tunc usurpatum, cum maxime floreret *Respublica* sub statu populari. Non est autem quod quis miretur, fuisse illis *salutem populi supremam Legem*, quibus ipse *Populus* erat *suprema potestas*. Erat ergo prudentium illorum veterum, qui *Aphorismi* hujus primi auctores extiterunt, judicio, *supremæ potestatis* salus suprema Lex: *Populi* nimirum in Democratia, at in Monarchia *Principis*.

XVIII. Dico *secundo;* dato non concesso, *Aphorismum* hunc de *populi*, id est, *subditorum salute* proprie intelligi: adhuc tamen perverse detorqueri in Regiæ dignitatis præjudicium, qui vel sic potestatem ejus ampliorem reddit et illustriorem. Hoc sensu scilicet. *Regem* qui populo *Leges et jura* dedit, non ita se voluisse *legum* vinculis astringi, ut non liceret

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excluding the King, is the Supreme Law, is either fool or knave; fool if he believe what he says, knave, if he do not.

[It is to be regretted that a moralist like Sanderson should have adopted this very common formula for the condemnation of adverse opinions, though somewhat mitigated in its Latin form. But we may see in Milton's writings on the same question, how little moderation of language was thought necessary in this controversy.]

The origin of the maxim shews that it is to be understood rather of the Safety of the Prince than of the Safety of the People, if the two are opposed. For it came to us from the times of the Roman Democracy: and naturally they held that the Safety of the People was the Supreme Law, because, with them, the People was the Supreme Authority. The maxim means that the Safety of the Supreme Authority is the Supreme Law; that is, in a Monarchy, the Safety of the Monarch.

18. *Secondly;* Supposing, what we do not grant, that the maxim is to be understood of the Safety of the People properly so called; it is really an assertion of the ample extent of the Royal Power, and is only by perverseness used to prejudice that Power. For it indicates that the King, who has given laws and rights to the People, is not him-

ipsi, ubi *Reipublicæ salus* palam periclitaretur, regni populique sibi a Deo commissi *saluti* consulere, etiam contra *verba Legis.* Non quod liceat *subditis,* tuendæ *libertatis* obtentu, *Legum* et omnia fidelitatis vincula abrumpere, et *Regiam* auctoritatem intolerando fastu sub pedibus conculcare: Sed quod *Principi* liceat, tuendæ suæ subditorumque *salutis* causa, strictam *Legum* observantiam ad tempus seponere, et *arbitrario jure* aliquantisper uti; ne ex nimium superstitiosa et intempestiva *Legum* reverentia, seque et subditum sibi populum, ipsasque etiam *Leges,* in hostium potestatem devenire patiatur.

XIX. Dico *tertio;* dato adhuc ulterius, nec concesso tamen, licentiam aliquam ipsis *subditis* eo Aphorismo concedi, ut posthabitis *Legibus,* ita postulante necessitate, *saluti publicæ* consulant: non tamen inde effici, quod nonnulli voluerunt. Non quasi subditis liceret, ubi *libertatem* suam in aliqua re læsam aut sentiunt, aut sentire se vociferantur, mox omnia *Legum* et officii repagula disjicere, et inconsulto *Principe* arma rapere, tumultibusque et seditionibus omnia complere. Sed quod pro *salute Principis et sua* adversus externos hostes aut perduelles domesticos tuenda, (ubi tam gravis pre-

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self so bound by the fetters of law, but that, when the safety of the State is in danger, he can consult such safety, committed to him by God, even by transgressing the words of the Law. The meaning is, not that the Subjects may, under pretext of defending Liberty, break all bonds of Law, and trample on the Royal Authority: but that the Prince may, for the sake of defending his own Safety, and that of his Subjects, deviate from a strict observance of the Laws, and for a time act arbitrarily; in order that he may not by a superstitious and unreasonable reverence for the laws, allow himself and his subjects, and the very Laws themselves, to be destroyed.

19. *Thirdly;* Supposing further, what still we do not grant, that this maxim allows some licence to the Subjects, to deviate from the Laws when necessity requires, and to act for the public Safety; still this would not lead to the conclusion which some draw from it. It leads to this, that in cases where the defence of the Safety of the Prince and their own, against foreign and domestic enemies, imposes a necessity, (the necessity being so great that a pious and prudent man cannot doubt that the Legislator, if he were present, would concede a relaxation of the Law;) the subjects may attend rather to that common Utility, which is the Supreme Law and the end of all Law, than to particular Laws, which are made to serve, and not to prejudice, that public Utility.

mit necessitas, ut vir pius et prudens non possit dubitare *Legislatorem* ipsum, si præsens esset, Legis sibi gratiam et relaxationem concessurum,) liceat *subditis*, communis utilitatis, quæ *suprema Lex* est et omnium *Legum Finis*, rationem habere magis, quam *Legum* particularium, quæ propterea latæ sunt, ut *communi utilitati* inserviant, non præjudicent.

XX. Summa est, *salutem Reipublicæ*, hoc est, Principis et subditorum, *supremam* esse *Legem*, cui inferiores *Leges* omnes ita inservire debent; ut postulante præsenti necessitate, *Principi* fas sit, ex potestatis suæ prærogativa, imo et *subditis* fas sit, ex rationabiliter præsumpto *Principis consensu*, a verbis *Legum particularium* quandoque recedere, ut periclitanti *patriæ* subveniant, ejusque *saluti*, velut *supremæ Legi*, consulant. Ita tamen, ut sub prætextu *publicæ salutis* libertatisve, nisi ex voluntate et consensu *supremæ potestatis*, vel expresso, vel (ut dixi) rationabiliter præsumpto, non sit aliquid, quod Leges non permittunt, attentandum.

XXI. Restant adhuc *Dubia* non pauca, ad causam hanc *Finalem* quoquo modo pertinentia; ut de *Privilegiis*, de *Dispensationibus*, de *relaxatione obligationis* in periculo vitæ, aliisque ejusdem generis: quæ fortassis quibusdam videbuntur cum *Fine Legum humanarum* non usquequaque convenire.

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20. The sum of the matter is, that the Safety of the State, that is, of the Prince and Subjects, is the Supreme Law, to which all inferior Laws must so bend, that if present necessity require, the Prince may by his prerogative, and the People by the presumed consent of the Prince, deviate from the words of particular Laws, assist their country when in danger, and act for its safety as the Supreme Law: but still, so that nothing be done against the Law, under such pretext, except by the consent of the Supreme Authority, either expressed, or reasonably presumed.

21. There remain other Doubts to be discussed, which must now be put off, though the delay will be considerable.

[I presume the expression, *in aliud (longinquum licet) tempus*, implies that the next lecture was to be given after the long vacation. In that Lecture, Sect. 3, he speaks of what he had delivered, *Superioribus terminis*, and says, Sect. 4, that he resumes, *Post tam diuturnum Academicarum exercitationum justitium.* In the beginning of the Fifth Lecture, he says, *De Conscientiæ Obligatione Passiva tractationem exorsus superiori Termino;* and again in the beginning of the Seventh Lecture, *De Legum Humanarum Obligatione egimus Superiore Termino.* Hence it appears that Lectures I., II., III., IV., were delivered in the first Term of 1647; Lectures V. and VI., in the second Term;

Quorum solutionem consultius duxi in aliud (longinquum licet) tempus rejicere; quam nimia prolixitate tam benevolos auditores fatigare.

Lectures VII., VIII., and IX., in the third Term; and Lecture X. in the fourth Term.

It appears, by what is said in the next Lecture, that the discussion of the Maxim, *Salus Populi Suprema Lex*, excited so much interest, that he resumed the subject in his next Lecture, instead of going on with the other Doubts here pointed at.]

PRÆLECTIO DECIMA.

IN QUA, PERVULGATISSIMUM ILLUD DICTUM, *SALUS POPULI SUPREMA LEX*, UT SIT RECTE INTELLIGENDUM, PAULO FUSIUS EXAMINATUR ET EXPLICATUR.

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1 Tim. II. 2.

...*Pro Regibus, et omnibus qui in Sublimitate constituti sunt: ut quietam et tranquillam vitam agamus in omni pietate et honestate.*

I. INSTITUERAM ex hoc loco, si forte meministis, bene-
voli auditores, de utraque *conscientiæ obligatione*,
passiva, activaque justam tractationem. In priore illa expli-
canda, post excussam primo loco et Scholastico more *consci-
entiæ definitionem*, in pervestiganda propria illa et adæquata
conscientiæ regula, cujus ex præscripto omnes et singulos suos
tum *dictandi* tum *judicandi* actus exercere debeat, operam
insumpsi. Ostensum ibi tunc esse quidem *Scripturam sacram*
ejus quam quærebamus *regulæ* præcipuam partem: ast adæ-
quatam esse *voluntatem Dei*, (quam *signi* vocant,) cuivis homini
1 qualitercunque patefactam. Sive *primum lumine innato;* ex
principiis practicis in Synteresi conservatis et per se notis:
quas Philosophi κοινὰς ἐννοίας, et προλήψεις φυσικάς, Aposto-
lus *legem Dei in cordibus nostris scriptam* dixerunt. Sive
2 *secundo, lumine illato;* per externam revelationem: partim
extraordinariam et privatam singularibus quibusdam personis
per *visiones, somnia, etc.* [a] πολυμερῶς καὶ πολυτρόπως, par-
tim *ordinariam* et publicam universo generi humano in *verbo*
3 *scripto.* Sive denique *lumine acquisito;* per conclusiones ex
principiis illis practicis, aut e *verbo Dei* scripto, vel propria
meditatione, vel institutione aliena rite et legitime erutas.

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[a] [Ex Epist. ad Hebræos, cap. i. vers. 1.]

1. Recapitulation of *Prælect.* IV.;

II. Ista omnia et singula *conscientias* hominum *obligare* dixi; eaque sola, absolute, *primario, per se,* et virtute propria: quia ea omnia et sola voluntatem Dei exhibent, cujus unius est in hominum *conscientias* merum et directum imperium. Esse tamen admonui præter hæc, et alia nonnulla; quæ *secundario, relative,* et in virtute legis sive voluntatis divinæ in qua fundantur, suo modo *conscientias obligant.* Convenire insuper illa omnia in hoc, quod quam habent *obligandi* vim, eam omnem *divinæ legi* acceptam debeant, (non esset alias *divina lex* adæquata *conscientiæ* regula:) differre tamen inter se singula; cum *specie,* propter diversitatem materiæ; tum etiam *gradu,* quantum ad vim obligandi. Esse porro eorum
quæ sic obligant *gradus tres; Primum* eorum, quorum obli- 1
gatio oritur ex *auctoritate alterius* jus habentis; in quorum
numero sunt *leges humanæ. Secundum* eorum, quorum obli- 2
gatio oritur ex actu libero *propriæ voluntatis:* qualia sunt
vota, juramenta, promissiones, et pacta spontanea. *Tertium,* 3
eorum quorum obligatio oritur ex intuitu *fraternæ charitatis;* in qua classe censetur lex sive *ratio scandali.*

III. De *obligatione legum humanarum,* multo mihi plura jam ante dicta sunt, quam initio proposueram: multo tamen fortasse pauciora, quam aut merebatur rei gravitas, cujus est in vita quotidiana usus longe frequentissimus, aut postularet dubiorum, quæ possent mentibus hominum scrupulum injicere, copia et varietas. In quibus dissolvendis, superioribus Terminis eo progressus sum, ut post emensas eas difficultates quæ ad *legum causas Materialem, Efficientem, et Formalem* haud incommode revocari existimarem, ultima prælectione ad eas tractandas, quæ ad *causam* earundem *Finalem* propius pertinerent, devenerim. Ubi jacto imprimis hoc totius disputationis velut fundamento, finem legum humanarum esse *bonum communitatis,* vel (quod idem est) pacem et felicitatem publicam: responsum est, qua licuit brevitate et perspicuitate, sex
istis quæ sequuntur quæsitis. *Primo,* An sit in Republica in 1
ordine ad *bonum commune legum humanarum* usus aliquis,
saltem necessarius. *Secundo,* quum intersit Reipublicæ ut 2
virtus colatur, *vitia* coerceantur, An *Legislator* possit *præcipere* omnes omnium *virtutum actus* et officia, et omnia

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2. Of *Prælect.* V.;

3. Of *Prælect.* VI., VII., VIII.; and especially *Prælect.* IX., which refers to the *Final Cause* of Laws.

cujuscunque generis *peccata prohibere.* Quod si non possit,
An saltem teneatur, utriusque generis quotquot potest *præcipere et prohibere* legibus quæ obligent subditos in conscientia?
3 *Tertio,* An et quatenus ad effectum obligandi subditos requiratur, ut *intentio Legislatoris* feratur in bonum publicum.
4 *Quarto,* si videbuntur leges jam ante latæ bono publico minus
utiles, An et quatenus earum *mutatio* sit vel a principe ten-
5 tanda, vel a subditis urgenda. *Quinto,* quum sit *finis legum,*
adeoque ipsius regiminis, *bonum commune,* An liceat ob *bonum*
commune ipsam totius regiminis formam immutare: vel ejus
6 immutationem tentare: et quatenus. *Ultimo,* illud solenne
dictum, *Salus populi suprema lex,* quomodo sit recte et sane
intelligendum?

IV. Hæc ego altius repetenda duxi, ut apud vos, post tam diuturnum Academicarum exercitationum justitium, totius instituti mei atque ordinis ratio melius constaret, et ut capita earum rerum, quas summa cum humanitate jam olim auditas, tam longo temporis intervallo excidisse facile credo, vobis in memoriam revocarem. Expectabitis opinor, nec immerito, ut institutum cursum currerem porro, et ad ea quæ proxime reliqua sunt *dubia* dissolvenda recta pergerem, de *privilegiis* scilicet, et *dispensationibus,* aliisque ad *causæ genus finale* quomodolibet spectantibus. Fateor sane, et mihi visum sic fieri oportere. Verum interpellant amici: monent quorundam eorum qui nunc sunt hominum intolerandam pervicaciam postulare potius, ut quo illi (perversius haud facile dixerim, an fidentius,) abutuntur in publicam perniciem *Aphorismo,* eum etsi ultima superioris Termini prælectione novissimo loco explicuerim, sub incudem tamen revocarem denuo, et genuinum ejus sensum plenius aliquanto quam est a me tunc factum, et explicatius aperirem; hoc est, me interprete, (addita duntaxat nonnulla verborum pompa) ut *actum agerem,* et coctam jam ante *cramben recoctam* vobis apponerem. Visa mihi parum æqua postulatio: illi interim contra, instare sedulo, prolixe rogare, ut facerem tamen. Vestræ erit humanitatis, donare

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4. There remain some Doubts to be resolved, referrible to this latter class; as, concerning Privileges and Dispensations, and the like.

But the Author's friends wished him first to expound further the true meaning of the Maxim last discussed, *Salus Populi Suprema Lex.*

hominis verecundiæ, quod rogantibus amicis concesserim: præsertim argumento usis ad flectendum animum meum longe efficacissimo; et vestrum plerisque, hoc ipsum si facerem, gratum fore se non dubitare.

V. Quid ergo sibi velit pervulgatum illud axioma, *Salus populi suprema Lex,* et quomodo sit intelligendum expedire, præsentis est negotii. Excuderunt intra paucos annos homines non optime feriati, et in *Rempublicam* etiam tantem, ut ante in *Ecclesiam,* invexerunt, novam una cum *Theologia Politicam.* Qui, ut sub obtentu *libertatis Christianæ* (sive conscientiæ,) totius regiminis *Ecclesiastici;* ita sub obtentu

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5. In recent times, he says, certain unhappy men have introduced a new Theology and a new Polity into Church and State; they, under the pretext of Christian Liberty, (or Conscience,) and Civil Liberty, (the Freedom of the Subject,) have shaken the edifice to its foundation; and are still pursuing the same course, using for the purpose violence and military terror. These men, when they are charged with trampling under foot the Royal Dignity, spurning the authority of the Laws, disturbing the Public Peace, practising atrocious Tyranny, levelling all ranks in State as well as in Church, and other impieties drawn from the sink of the Anabaptists, defend themselves with this Aphorism, "The Safety of the People is the Supreme Law;" which Maxim they put forwards as alone outweighing Laws, Kings, Rights, and Customs.

[I have already noticed that the House of Peers, as well as the Royal Authority, was abolished shortly after this lecture was delivered.

According to Clarendon, (*Hist. Rebel.* B. x.) in the year in which these lectures were delivered, 1647, the Parliament sent a Commission to Oxford "to reform the discipline and erroneous doctrine of that famous University, by the rule of the Covenant; which was the standard of all men's learning, and ability to govern; all persons of what quality soever being required to subscribe that test; which the whole body of the University was so far from submitting to, that they met in their Convocation, and, to their eternal renown, (being at the same time under a strict and strong garrison, put over them by the Parliament; the king in prison; and all their hopes desperate,) passed a public act and declaration against the Covenant, with such invincible arguments of the illegality, wickedness, and perjury contained in it, that no man of the contrary opinion, nor the Assembly of the Divines, (which then sat at Westminster, forming a new catechism, and scheme of religion,) ever ventured to make any answer to it: nor is it indeed to be answered, but must remain to the world's end, as a monument of the learning, courage, and loyalty, of that excellent place, against the highest malice and tyranny that was ever exercised in or over any nation; and which those famous commissioners

libertatis civilis (sive subditorum,) totius regiminis *politici*, non modo vim omnem subnervare, sed ipsam quoque fabricam ab imis fundamentis revulsam labefactare, in hac tanta rerum perturbatione strenue hactenus conati sunt; hodieque pergunt, cum summo animorum ardore et terrore militari, conari. Hi, quoties conculcatæ sub pedibus *Regiæ dignitatis*, spretæ sanctarum *Legum auctoritatis*, perturbatæ *pacis publicæ*, ruptis

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only answered by expelling all those who refused to submit to their jurisdiction, or to take the Covenant; which was, upon the matter, the whole University; scarce one governor and master of college or hall, and an incredible small number of the fellows, or scholars, submitting to either: whereupon that desolation being made, they placed in their rooms the most notorious factious presbyterians, in the government of the several colleges or halls; and such other of the same leaven in the fellowships, and scholars' places, of those whom they had expelled, without any regard to the statutes of the several founders, and the incapacities of the persons that were put in. The omnipotence of an ordinance of Parliament confirmed all that was this way done; and there was no farther contending against it."

The Declaration here referred to passed the Convocation unanimously, June 1, (o. s.) 1647, and is entitled, "The Reasons of the University of Oxford against the Solemn League and Covenant, the Negative Oath, and the Ordinances concerning Discipline and Worship." It was principally drawn up by Sanderson: and is commonly printed in his works.

Izaak Walton, in his *Life of Sanderson*, (with whom he was personally acquainted,) speaks thus of his removal from Oxford:

"I now return to Dr Sanderson in the chair in Oxford, where they that complied not in taking the Covenant, Negative Oath, and Parliament Ordinance for Church discipline and worship, were under a sad and daily apprehension of expulsion; for the visitors were daily expected, and both city and university full of soldiers, and a party of presbyterian divines, that were as greedy and ready to possess, as the ignorant and illnatured visitors were to eject the dissenters out of their Colleges and livelihoods: but notwithstanding Dr Sanderson did still continue to read his lecture, and did to the very faces of those presbyterian divines and soldiers, read with so much reason, and with a calm fortitude make such applications, as if they were not, they ought to have been ashamed, and begged pardon of God and him, and forborne to do what followed. But these thriving sinners were hardened; and as the visitors expelled the orthodox, they, without scruple or shame, possest themselves of their Colleges; so that with the rest, Dr Sanderson was (in June 1648) forced to pack up and be gone, and thank God he was not imprisoned, as Dr Sheldon, Dr Hammond, and others then were."]

omnibus jurium repagulis exercitæ in concives effrænis et infandæ *tyrannidis,* affectat in Ecclesia, in Republicæ (sublato omni natalium, honorum, statuum discrimine) *paritatis,* aliarumque ex *Anabaptistarum* puteis haustarum impietatum, postulantur: hoc unico, velut clypeo, seque suosque mores tuentur, *salute populi;* hanc *legibus, regibus, juribus, moribus,* unam universis anteponendam scilicet.

VI. Ex hoc tam laxo et periculoso vulgaris dicti interpretamento, quum tumultibus, seditionibus, et omne genus licentiæ populari, non jam lata fenestra, sed decumana plane porta aperiatur: manifestum est, qui hoc clypeo nefaria sua scelera tuentur, non simplicem et genuinam ejus dicti sententiam amplecti, sed alienam ei affingere, quæ pravis suis consiliis et causæ non bonæ præbeat, ex coacta interpretatione, speciem aliquam patrocinii. Quotus enim quisque est hominum, cui si (ut *avaritiæ, ambitioni, odio, iræve* suæ inserviat) res novas moliri, et per fas nefasque latrociniis, rapinis, et concussionibus omnia complere libuerit; non proclive erit facinoribus suis et inceptis quibuscunque nefariis *salutem populi* prætexere? Excutite quæso omnia qua patet orbis Annalium et historiarum monimenta; sacrarum, prophanarum, veterum, recentiorum, exterarum, nostratium: invenietis hoc ipsum usque et usque factitasse, sub eodem *libertatis* et *salutis popularis* prætextu, omnium temporum, omnium locorum *Catilinas* et *Cethegos:* ut [b]*peponem cordis loco habere* videatur (*Tertulliani* locutio est) qui sibi tam tenui fuco os sublini patiatur. Sed quo me, dum justæ indignationi laxo habenas, incautum rapuit tempestas? Reprimo igitur me jam, ne videar *τῆς ὑποθέσεως ἐκπεσεῖν,* et pro disputatore declamatorem agere: et ad rem ipsam accedo.

VII. Ubi illud imprimis expendendum est, quid in dicto

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[b] contra Marcion. Lib. IV. cap. 40.

6. Those who use the Maxim for such a purpose, pervert it. It is easy to use "the Safety of the People" as a pretext for revolution, rapine, and extortion. We find history full of such crimes, committed by the Catilines and Ceetheguses of all times, on the pretext of the Liberty and Safety of the People; so that a man must have, as Tertullian says, a pumpkin for a head to be taken in by such phrases. But I shall restrain my indignation, and return to the discussion of the question, what is the true import of the Maxim, *Salus Populi Suprema Lex?*

axiomate *salutis* appellatione veniat intelligendum. Non enim, siquis aut *dignitatem* suam aut *libertatem*, in re aliqua levicula, vel etiam fortassis admodum gravi, læsam sentiat aut sentire se putet; illico *salutis* se jacturam fecisse, aut de *salute* periclitari, jure conqueri poterit. *Saluti* enim alicujus rei aut personæ, non *læsio* quævis, aut *nocumentum*, sed *interitus* opponitur: ut Græcis *τῇ σωτηρίᾳ ἡ ἀπώλεια.* Quinimo pariter omnino se res habet (servata utrinque debita analogia) in *corpore politico*, et *in Republica* sicut in *corpore humano* et persona singulari. Præ contrariarum qualitatum in *humano corpore* pugna, ex aliquo interni calidi aut humidi *excessu* vel *defectu*, et extrinsecus accidentium varia immutatione, vix fieri potest ut quis tam integra valetudine usque perfruatur, quin ut sæpicule aliqua saltem corporis parte, interna vel externa, id patiatur, quod ei *molestiam* afferat: fieri etiam potest, ut ex *podagra*, *odontalgia*, *calculo*, aut alio partium morbo acutissimos sentiat *dolores*, vel etiam *toto corpore* afflicto æger decumbat; ut interim non sit opportunum, nedum necessarium, ad extrema quæque remedia, ut in aperto vitæ *salutisque* discrimine, confugere. Sic in *Republica*, non est mox aliquid attentandum contra *leges et jura*, non contrahenda vulgi colluvies et tumultus excitandi, non *ad arma, ad arma* continuo conclamandum, ut *saluti populi* consulatur scilicet; quam primum popularis aliquis *tribunus*, aut audaculus quis-

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7. First, what is *Salus?* We reply, we are not to suppose that if any one feels his dignity or his liberty wounded, in a slight, or even in a grave matter, that it is forthwith a question of *Salus*, of Preservation; that his *Safety* is endangered or lost. The *Safety* of anything or person is opposed to, not Damage or Annoyance, but to *Destruction.* And the same is the case in the Body Politic as in the human body. Scarcely any one is constantly in perfect health; he often suffers indisposition, or even pain, in some limb, or in the whole body: and yet still is not in a condition in which it is wise to recur to extreme remedies, as in a question of life or death. And so in the State, we are not, merely because some demagogue accuses the Prince, Nobles, Magistrates, Judges, or their Officers, of violated rights, neglected duties, or the like, calumniously, nor even truly,—we are not therefore forthwith to cry "To arms, To arms!" and call upon men to stand up for the Safety of the People. Even under the best of Kings, and in the best constituted States, there always have been abuses of power, as, oppression of the weak, and other grievances; nor can any care of Governors, or any severity of Laws, entirely prevent or remedy this. If, as soon as an instance or two of such a kind appear, it is forthwith thought allowable

piam *rhetoricator* δημάγωγος, *principem, proceres, magistratus, judices,* eorumve ministros, aut eorum saltem aliquem, violati *juris,* illatæ *injuriæ,* aut neglecti quomodolibet *officii,* per calumniam (vel etiam si forte jure merito) reos apud plebem *pro concione* peregerit. Fuerunt eruntque semper, sub optimis *Regibus* et in optime constitutis *Rebuspublicis,* ex abusu potestatis tenuiorum civium *oppressiones,* aliaque *gravamina* non pauca : quibus in integrum aut prævertendis aut medendis, nulla *regentium* cura et industria, nulla sufficere queat *legum* severitas. Hujus generis si quoties unum aut alterum exemplum emerserit, licebit confestim factiosis civibus, obtentu *salutis publicæ,* legibus et jure contemptis, *vi et armis* rem gerere pro lubitu suo: a turbis et tumultibus nunquam tuta aut quieta erunt regna et Respublicæ. Omnino prædixit *Christus* [c] ἀνένδεκτον εἶναι μὴ ἐλθεῖν τὰ σκάνδαλα: et [d] *mundo nobis exeundum* esse monuit *Apostolus;* vel quærendam *Utopiam* aliquam, aut *Rempublicam Platonis,* quæ nos salvos præstet; si *salutem populi* sic interpretari velimus, ut nisi infimi quique cives ab omni injusta vi, et iniqua potentiarum dominatione, sint prorsus securi, nulla sit reliqua *publica salus.* Tunc *salus* agitur Reipublicæ cum ab *externorum hostium* incursionibus, vel *improborum civium* deprædationibus, manifeste in tam apertum discrimen res deductæ sunt, ut ni provide et mature succurratur, patria sit indubie *peritura.*

VIII. De *salute* vidimus. Videndum proxime, quam recte a novatoribus nostris accipiatur alterum illud *populi* vocabulum. Est autem *populus,* ut ex amissis *de Republica*

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[c] Luc. xvii. 1. [d] 1 Cor. v. 10.

that factious citizens, may, on the plea of the Public Safety, disregard law and right, and deal as they please, with force and arms; Kingdoms and States will never be safe and quiet. Christ said that offences must needs come (Luke xvii. 1). And as St Paul says (1 Cor. v. 10), "Then must we needs go out of the world," and seek some Utopia or Platonic Republic, if we are to interpret the "Safety of the People" in such a way that there is no Public Safety except the meanest citizen is secure against any oppression whatever from the mightiest. The Safety of the State is then at stake, when foreign invasion, or intestine sedition has produced such danger as threatens speedy and certain destruction. And so much of *Salus,* Safety.

8. We must now consider *Populi, of the People,* how far our innovators rightly interpret this word. A People is "an assemblage of men

Ciceronis libris definit [e] *Augustinus, coetus multitudinis homi-*
num juris consensu et utilitatis communione sociatus. Qua
appellatione *Romani* olim omnes omnis ordinis et conditionis
cives continebantur. Erant autem illi, præter Monarchas
(*Reges* primis, *Imperatores* ultimis seculis,) in triplici gradu:
patricii scilicet sive senatorii ordinis, *equites*, et *plebs*. Sed
qua latitudine vox ea apud *Romanos Scriptores*, ubicunque
occurrit, sit accipienda; ex adjunctis circumstantiis lectori
colligendum est: id quod plerumque ex appositis *oppositis*
terminis (si qui appositi sint) optime fieri potest, certissimo in
eam rem argumento. Accipi autem solet *populi* vocabulum
1 Romanis Scriptoribus, *tribus* hisce fere modis. *Primo*, et
omnium modorum rarissime, pro *sola plebe*, qui fuit totius
Romani populi infimus ordo. Ut in illo [f] *Martialis*,

Dat populus, dat gratus eques, dat thura Senatus.

Ubi oppositus senatui et equitibus *populus*, non nisi *plebem*
2 solam significare potest. *Secundo*, pro utroque inferiori or-
dine populi, *plebe* scilicet *et equestri ordine* conjunctim, ordine
supremo sive *patricio* tantum excluso. Visum enim fuit *patri-*
bus, initio constitutæ Reipublicæ exactis jam *regibus*, aliquam
honoris et dignitatis *prærogativam* supra alios cives apud
se retinere, inque ejus rei significationem semet a reliquo
populi coetu nominis appellatione segregare. Unde illæ fluxe-
runt solennes formulæ, *Senatus Populusque Romanus*, *visum*

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[e] De Civit. Dei, Lib. II. cap. 21. [f] Lib. VIII. Epigr. 15. [v. 3.]

associated by rights acknowledged in common, and benefits shared in common;" as Cicero says in his *Republic*. And this, in Rome, formerly included all the citizens of all ranks; that is, besides the Monarchs, (Kings in the early, Emperors in the later ages,) three degrees, Patricians or Senators, Knights (*Equites*), and Commonalty (*Plebs*). But in the Latin writers, the word *Populus* is taken with various latitude.

1°; It is sometimes, but rarely, used for *Plebs;* see the passage from Martial.

2°; It is used for the Equestrian Order and Plebs, in opposition to the Senate; whence the phrase S. P. Q. R. the Senate and People of Rome.

3°; It is used for all the three orders; which, after the Kings were ended, and before the Emperors were begun, formed the whole State. And this is the sense in which *Populus* is to be understood when Roman writers speak of the safety, the dignity, the majesty, of the People; for during all that time the People was the State.

est Senatui Populoque Romano, etc. In quibus *populi* nomen *equites cum plebe,* hoc est, excepto *Senatu,* reliquos cives omnes complectitur. *Tertio,* pro omnibus omnium or- 3
dinum civibus indiscriminatim, *patribus, equitibus, plebe:* ex his enim *tribus* ordinibus, postquam desiissent esse *Reges,* necdum orti essent *Imperatores,* universa civitas constabat. Et in hoc sensu, siquidem toto illo spatio illius Reipublicæ *status* erat *popularis,* intelligendi sunt Romanarum rerum scriptores, quoties de *salute dignitate, majestate populi* conservanda loquuti sunt.

IX. Hæc ego diligentius paulo exposui; non solum quia vocabulorum plerorumque hujus generis propriæ *significationes* ex ejus populi usu pendent, a quibus et voces ipsæ ad nos derivatæ sunt: sed etiam alia de causa duplici. Altera, 1
ne *ambiguæ vocis* minus commoda interpretatione decipi nos et circumveniri patiamur: altera, ne in nuda *populi* appella- 2
tione vis fiat, in præjudicium ejus qui princeps est communitatis, et *populi caput.* Quarum utraque quanti sit momenti ad rem præsentem, ex his quæ jam dicturus sum, statim intelligetis.

X. Dico itaque *primo,* [g]*populi* vocabulum, (ut pleraque alia nomina multitudinem aggregatam significantia,) sumi posse *dupliciter.* Vel *collective,* ut significet *totam communitatem* 1
Reipublicæ; id est, principem et subditos simul: vel *dis-* 2
cretive et præcise, ut significet *subditos* tantum et seorsim a Rege. Eodem omnino modo, quo *corpus* vel dicit reliqua *membra simul* cum capite; vel *membra* illa præcise et seorsim a capite: Et *Familiæ* appellatio nunc omnes complectitur qui unarum sunt ædium, uxorem, liberos, famulos,

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g [Conf. supra Præl. IX. Sect. 16.]

9. We have given this exposition of words, not only because, in such cases, the proper meaning of words depends on their history, but also, partly that we may not be deceived by the use of an ambiguous word, and partly that by the very term *People,* a prejudice may not be raised against him who is the Head of the People.

10. The word *People* is used in two senses; collectively, meaning the whole Community, Ruler and Subjects, or distinctively, meaning the Subjects only. [Sanderson had already urged this point, *Præl.* IX. Sect. 16, 17. He here adds other illustrations.] So *Family* sometimes includes the Head of the Family, as when we speak of *so many Families;* sometimes excludes him, as when we speak of *him and his*

ipsumque etiam *patrem familias* qui reliquis præest; nunc eos tantum qui sub ipsius imperio sunt, et quorum ipse curam gerit: Et *Exercitus* nomine, alias continetur una cum militibus ipse etiam *Imperator*, alias non continetur. Quod idem et in *Regni*, *Parlamenti*, aliisque id genus vocibus, quæ significant *collectionem* quidem multorum, cum ordine tamen et ratione ad *unum* aliquod velut principium et caput, facile est cernere. Igitur si non *animo maligno* (ut suspicari licet) at certe *periculosissimo errore* factum est, ut quod de *populo* priore sensu dictum est, *collective* scilicet et ut ea vox complectitur inclusive *totam communitatem*, i. e. una cum subditis principem, detorqueatur et accommodetur *populo* in posteriore acceptione, *i. e. solis subditis* exclusive.

XI. At qui constare poterit nobis, inquietis, *Populi* appellationem priore sensu et *collective*, in isto Axiomate intelligi debere potius, quam posteriore et *discretive?* Respondeo, ex communi usu loquendi, et analogia aliarum vocum ejusdem rationis et significationis abunde satis id constare. In quibus certissimus interpretandi Canon est; *Voces collectivas collective semper sumi debere, nisi adjectum ejus oppositum diversum postulet.* Exempli gratia, ubi dicitur, *Col.* i. 18, Christum esse *caput corporis Ecclesiæ:* manifestum est ex opposito adjecto, *Capitis* scilicet mentione, (cui *Corpus* ibi *relative* opponitur;) *Corporis* vocabulum *discretive* sumi, pro reliquis membris corporis præcise et seorsim a capite. Sic etiam, siquis diceret Imperatorem *Exercitum* e castris eduxisse, aut in hyberna demisisse; vel patrem-familias interdixisse, nequis *domesticorum* intempesta nocte exiret

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Family. So *Army*, *Kingdom*, *Parliament*, and other collective words, sometimes include in this meaning, the Head of each; sometimes they do not. And to take, in the latter sense, of the *People*, the Subjects as opposed to the King, what ought to be understood in the former sense, of the People, the whole Community, including the Governor, is, if not a malignant device, a most dangerous errour.

11. But how do we know that the word ought here to be taken in the former sense?

We reply, from the common use of language. It is a solid General Rule of interpretation, "That collective words are always to be taken collectively, except there is some addition which implies contrariety." Thus Col. i. 18, where it is said that "Christ is the head of the body, the Church," the words added, "of the body," shew that *Head* is here opposed to *Body*. So if we say, "The General led forth

ex ædibus; vel (quod de [h] *Davide* scribitur) quidquid Rex fecisset, gratum id *Populo* fuisse: manifestum est, ex adjecto ubique opposito *Imperatoris, Domini, Regis* nomine, vocabula illa collectiva *Exercitus, Familiæ, Populi,* non esse tamen *Collective* intelligenda, sed *discretive* et exclusive. Hoc est, *Exercitus* appellatione milites solum contineri, Imperatorem non item; et *Familiæ,* domesticos solum, non Dominum; et *Populi,* subditos solum, non item Regem. Ratio est, quia adjectum in ipso orationis filo *oppositum,* quod est alterum *correlatorum,* necessario innuit *vocem collectivam,* sibi ex adverso respondentem et ei *relative* oppositam, continere suum *correlatum præcise:* hoc est, *multitudinem* duntaxat, illi velut principio et capiti connexam et conjunctam, non autem *totam communitatem* ex utroque termino correlato quasi aggregatam.

XII. Ceterum ubi non est adjectum *oppositum,* quod ipsius significationem ad alteram tantum *relationis* partem necessario contrahat; ab omni sana ratione alienum est, *collectivam dictionem* aliter quam *collective* accipere, et in justa sua latitudine: ita scilicet ut *utrumque relationis terminum* suo ambitu complectatur. Maxime, ubi in *salutis, utilitatis,* alteriusque boni aut commodi quod sit utrique commune, ratione sermo versatur. Exempli gratia; Si statueretur cras movenda castra, ne *Exercitus* ab hoste opprimeretur; aut in *Familiæ* usum fruges colligendas: non esse incolumi capite vel *Orestes* juraret eum hominem, qui quæ de *Exercitu* et *Familia* dicta

[h] [2 Sam. cap. iii. vers. 36.]

his Army," "The Master gave orders to his Family," or as is said of David, that "What the King did pleased the People;" it is plain that in these cases, *Army, Family, People,* are taken distinctively. The addition, in these cases, is a correlative, and necessarily implies the other correlative, the word in its limited sense, the part which is opposed to the Head, and not the whole.

12. But when there is no such addition, to determine the meaning of the word to one part of the relation only, all sound rules of construction require that the Collective Word be taken collectively, so as to include both terms of the relation: and especially when the question is one of safety, utility, and the like. Thus if we were to say that "the Camp must be shifted to save the Army," or "the harvest must be got in to feed the Family," none but a madman would suppose that the General was excluded in the one case, or the Father of the Family in the other.

essent sic intelligeret, quasi *militibus* solum et *famulis* prospectum esse vellent, nulla interim *Imperatoris* qui Exercitum, nulla *Patris-familias* qui familiam regit, habita ratione. Quod perinde est, ac si valetudinarius a medico admonitus, ut *Corporis sui* curam aliquanto diligentiorem in posterum haberet; *pectus et crura* et quæ post cervicem sunt *membra* inciperet exinde quam diligentissime fovere; quid interim *Capiti* fieret, supine securus: eo quod medicus *Corporis* tantum meminisset, non item *Capitis*.

XIII. Accedo adhuc ad rem propius. Si gregariorum forte militum turba *salutem Exercitus* dicerent esse *supremam Legem militarem;* suum autem *Imperatorem* dura nimis nec ferenda militibus imperare, ita ut periculum sit ni mature jugum collo excutiant, amissam brevi fore universam *Exercitus libertatem:* atque ex hoc principio de tuenda *vi et armis* libertate, imperatis non faciendis, ipso etiam *Imperatore* tollendo, consilia inter se agitarent; Vel si *servi domestici*, (quos tamen vult Apostolus, 1 *Pet.* ii. 18, *heris non bonis tantum et æquis, sed duris quoque et morosis subjici,*) facta inter se conjuratione, herilia jussa ut iniqua recusarent, *herum* ipsum ut asperius dominantem exturbarent ex ædibus, claves et loculos et universam supellectilem occuparent, et omnem *rem domesticam* pro sua libidine administrarent; hoc uno prætextu, quod sit *salus Familiæ suprema Lex Œconomica.* Quis non fateretur scelerata illa et nefaria *consilia*, ex istis *principiis*, (quæ sane, sane intellecta, et verissima sunt et utilissima,) non posse legitima ulla consecutione deduci? Et tamen non est *ovum ovo* similius, quam huic argumentandi generi eorum hominum ratiocinatio, qui seditionibus civilibus

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13. We will apply this more closely: Suppose that a party of common soldiers should say that the Safety of the Army was the Supreme Military Law, and that their General was so severe, that if they did not speedily mutiny, the liberty of the army would be lost; and should on this principle, plot together to defend their liberty with force and arms, to disobey orders, and to remove the General: Or if the servants of a family (notwithstanding what St Peter says, 1 Pet. ii. 18) should conspire together to refuse their master's commands as too hard, should turn him out of the house, and take possession of the keys, cupboards, and furniture for themselves, on the pretext that the Safety of the Family is the Supreme Domestic Rule: who would not confess that the principle, though right and good in itself, was grossly misapplied in these cases? And yet this is exactly what men do, when

salutem populi obtendunt. Quasi vero non contineretur, idque eminenter, in salute *Exercitus*, et *Imperatoris;* in salute *Familiæ*, et *Patris-familias;* in salute *Populi*, et *Principis salus.* Ut summatim dicam; *salutem populi*, id est, Regis et subditorum simul, fatendum est esse *supremam Legem:* ast *salutem populi*, id est, *subditorum* secluso Rege non item.

XIV. Dico *secundo*, quiddam amplius. Etsi *Populi* vocabulo in hoc axiomate nec *subditos* sine Principe, nec sine subditis *Principem*, præcise et solitarie intelligi debere, sed utrosque conjunctim, satis dilucide a me confirmatum existimem: qui tamen aut *dignitatem personarum*, aut istius ipsius *Aphorismi originem* attentius consideraverit, libentius eum concessurum, de *salute Principis* præcise intelligendum esse celebre id dictum, quam de *salute subditorum* præcise. Imprimis, sacrosanctam esse *Regum Majestatem*, non veteres solum *Patres Ecclesiastici* (etiam tunc cum nulli adhuc essent *Reges Christiani*,) prolixissime agnoverunt; qui eos ut homines *a Deo secundos*, et *solo Deo minores* coluerunt, pro eorum *salute* vota et preces Deo obtulerunt, ab eorum *salute* totius populi salutem et felicitatem pendere docuerunt: sed et ipse Deus Opt. Max. in sacris literis (ut fuse ostendi posset, si opus esset) abunde testatum esse voluit. Unde factum, ut ea semper mente fuerint pii omnes et bonæ indolis cives, ut ubi ex alea belli in extremum discrimen adductæ res essent, unius *Regis salutem* suæ omnium saluti anteponendam judicarent: Quod, uti bonos subditos decuit, aperte professi sunt [1]*Israelitæ* illi, qui sub execranda conjuratione *Absolonica*, *Davidi Regi* debitam fidelitatem servaverant. Nec aliud voluere, qui *Regem*

[1] 2 Sam. xviii. 3.

they make the Safety of the People their pretext for seditious proceedings. Such an application is absurd enough: as if the safety of the General, of the Master, of the Prince, were not to be included in the safety of the Army, the Family, the People. And thus *First*, the Safety of the People exclusive of the Sovereign, the Safety of the Subjects only, is not the Supreme Law. [See *Prœl.* IX. Sect. 18.]

14. But *Secondly*, we go further: though the safety of the People in this Aphorism is not to be understood either of the safety of the People exclusively, or of the safety of the Prince exclusively; yet it may more easily be understood in the latter than in the former sense, as is plain if we look either to the dignity of the person or the origin of the Maxim.

1°, The sacredness of the King's person, and the importance of his

(non homini mortali in rem suam turpiter adblandientes, sed spiritu Dei sancto dictante locuti,) *narium suarum spiritum* esse dixerunt. Sic enim pius, et ab utero sanctificatus propheta, [k]*Jeremias* locutus est, translatione usus aptissima: quum sit *Spiritus* ille qui per *nares* attrahitur et emittitur, [l]*Spiritus* ille *vitalis,* quo quasi vinculo connectitur *anima corpori,* et quo deficiente, *exspirare* protinus necesse est animal vivens et interire. *Cum exit Spiritus ejus revertitur homo in terram suam, Psalm.* cxlvi. 4.

XV. Quin et [m]illud observatu dignum est, a *Romana* gente ad nos devenisse illud de quo nunc agimus *axioma:* illis tunc usurpatum cum maxime floreret *Roma* sub statu populari. Non est utique quod quis miretur, illis *salutem populi* fuisse pro *suprema Lege;* quibus ipse *Populus* erat *suprema potestas. Populi* tunc erant Leges, *Populi* judicia, *Populi* universa jurisdictio, ipsa denique *αὐτοκρατορία Populi,* et majestas. Unde illa tam frequens, apud historicos omnes, apud *Ciceronem,* apud alios ejus ævi scriptores de *Majestate populi Romani* mentio; ut in *statu Democratico:* quæ omnia in *statu Monarchico,* non populi sunt, sed *Principis.* Ergo quanti illis fuit *populi salus,* apud quos *populi* erat *Majestas,* quod quanti fuerit hoc ipso *Aphorismo* toti orbi testatum esse voluerunt: tanti nobis, si nos ejus *Aphorismi* auctoritate tueri velimus, (servata modo, ut par est, in tam differentibus utriusque Reipublicæ formis analogia,) debet esse *Regum salus,* qui non aliam quam *Regiam* agnoscimus *Majestatem.*

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[k] Thren. iv. 20.

[l] *Animus Reipublicæ tu es: illa corpus tuum.* Senec. de Clement. Lib. I. cap. 5.—*Ille spiritus vitalis, quem hæc tot millia trahunt.* Ibid. cap. 4.

[m] [Conf. Præl. IX. Sect. 17.]

safety, is acknowledged not only by the Fathers of the Church, (even when as yet there were no Christian Kings,) but taught by God himself in Scripture. Hence pious men have always perferred the King's safety to that of all others, see 2 Sam. xviii. 5. And so Lament. iv. 20, the King is called "the breath of our nostrils," as being essential to the life of the nation.

15. 2°, The origin of the Aphorism is from the Romans; and with them the People was the Sovereign; and therefore the Safety of the People the Supreme Law. But the Laws, the Courts of Law, the Jurisdiction, the Supreme power, which belong to the People in a Democracy, belong to the Prince in a Monarchy: and therefore in such a case, by analogy, the Safety of the Sovereign is the Supreme Law. [See *Præl.* IX. Sect. 17.]

XVI. Ex his quæ dicta sunt satis constare puto, nec in illa *salutis*, nec in ista *Populi* appellatione eam inesse vim, ut inde possit sine summa perversitate pervulgatum hoc *Axioma* in Regiæ dignitatis præjudicium distorqueri. Quod si reliqua illa, quæ sola jam supersunt, verba rite expendantur, *suprema* scilicet *Lex;* agnoscent, uti spero, quibus aliquid reliquum est aut cordis aut frontis, isto *Axiomate* vix potuisse dici aliquid quod ad summam *Regum potestatem* stabiliendam amplius esset et illustrius. Supponit enim ista locutio *suprema Lex,* esse oportere necessario alicubi in omni Republica potestatem aliquam, quæ sit omni positiva *Lege humana* superior: ad quam prospicere pertineat, et auctoritate sua procurare, nequid ex *Legum defectu,* vel nimium superstitiosa *observatione,* Respublica detrimenti capiat. Cujus rei ratio manifesta satis est: quia nec potest *Legislator,* vel prudentissimus, omnes *circumstantias* eventuum futurorum *prævidere;* nec ut nihil contingat eorum quæ insecutura suspicatur mala et incommoda, Legibus sufficienter *præcavere.* Quod nec *Legum* culpa fit, nec *Legislatoris;* sed (ut optime observavit [n] *Aristoteles,*) ex ipsa natura earum rerum, quæ *Legibus* definiendæ sunt: quæ cum sint et pro varietate sua *indefinitæ,* et quia ex futuro pendent *incertæ,* non possunt propterea [o] *certis* aliquibus et *definitis regulis* comprehendi, satis igitur fecit officio suo *Legislator,* si legibus ea constituerit, quæ sint [p] *plerumque* justa, et utilia toti communitati: etsi fieri potest, sæpissimeque fit, ut ex emergente aliqua inopinata occasione, deficiant illæ *Leges* in casu aliquo particulari non præviso. Quo in casu, nisi sit alicui personæ vel personis exercendæ *arbitrariæ*

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[n] [Τὸ γὰρ ἁμάρτημα οὐκ ἐν τῷ νόμῳ, οὐδ' ἐν τῷ νομοθέτῃ], ἀλλ' ἐν τῇ φύσει τοῦ πράγματος. Aristot. Ethic. Nic. Lib. v. cap. 14.

[o] *Nulla tanta providentia potuit esse eorum, qui leges componebant, ut species criminum complecterentur.* Quintil. Declam. cccxxxi.

[p] Τὸ ὡς ἐπὶ τὸ πλέον λαμβάνει ὁ νόμος. Aristot. ubi supra.

16. So much of *Salus Populi:* now of *Suprema Lex.*

This expression, "The Supreme Law," supposes that there must somewhere in a State reside a Power which is to provide for emergencies for which Law does not provide. And that it does not, is no fault either of the Law or of the Legislator, but arises from the nature of the things with which Law is concerned. For these things are too indefinite and various to be comprehended always in definite and fixed Rules. The Legislator does his part, if he command what is commonly just and useful: but his Rules may fail in unforeseen cases; and in

cujusdam *potestatis* relictus locus: nullum erit reliquum remedium satis efficax, quo periclitanti *patriæ* subveniatur; et *publicæ saluti* consulatur. Hoc est, quod viri prudentes semper statuerunt, et ratio etiam suadet, *Æquitati* cedere debere ubi exigit necessitas, *Justitiam Legalem:* quum sit *æquitas* nihil aliud, (eodem *Aristotele* definitore,) quam [q] νομίμου δικαίου ἐπανόρθωμα, *Emendatio* scilicet sive *Correctio justitiæ legalis*, vel etiam ipsius *Legis* (ut ipse suam illam definitionem mox explicat) ἐπανόρθωμα νόμου ᾗ ἐλλείπει διὰ τὸ καθόλου, supplendo ejus *defectum* in casibus particularibus, in quibus ipsam aut a *Justitia*, aut ab *utilitate publica*, deficere contingit ob nimiam *generalitatem*. Leges enim necesse est constitui [r] *generaliter* per respectum ad ea quæ *plerunque* fieri solent; non autem ad omnia ea quæ contingere possunt in *particulari:* quorum nonnullis si stricte et ex verborum prescripto accommodentur *Leges*, deficere eas necesse est etiam, aut a *Justitia* morali, aut ab *utilitate communi*, aut ab utraque.

XVII. Hoc igitur posito, postulare *salutem populi*, hoc est, publicam utilitatem, ut sit in Republica auctoritas aliqua *Legibus superior*, quæ earum *defectus* suppleat: et illud etiam necessario consequitur, quod idem *Aristoteles* [s] *in Politicis* asserit, supremam hanc *auctoritatem* non posse ad alium quempiam pertinere quam ad ipsum τὸν ἄρχοντα hoc est, eum qui toti communitati *cum summo imperio præest*,

[t] Ὧι λαοί τ' ἐπιτετράφαται, καὶ τόσσα μέμηλε,

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q [Ethic. Nic. Lib. v. cap. 14.]

r [Δοκοῦσι δὴ] τὸ καθόλου μόνον λέγειν οἱ νόμοι, ἀλλ' οὐ πρὸς τὰ προσπίπτοντα [ἐπιτάττειν]. Aristot. [Politicor. Lib. III. cap. x. § 4, ed. Stahr.]

s Lib. III. Sect. 2.

t Homer. Iliad. β'. [v. 25.]

these cases there will be no remedy if there be not some arbitrary power which can meet the danger and direct its actions by the public safety. Just as Equity is a remedy of the defects of Legal Justice, when it fails in consequence of the generality of legal Language. Laws must be expressed in general terms, and hence must sometimes be insufficient for the purposes, both of Moral Justice, and of Public Utility. See the passages from Aristotle [and *Elem. Moral.* Art. 406].

17. Hence there must be an Authority superior to the Law, to remedy such defects, and this authority must be vested in the Sovereign, whether he be one or more.

But this does not authorize the Subjects to trample down the authority both of Laws and of Kings, on the pretext of the Aphorism,

Sive is *unus* sit, ut in regimine Monarchico; sive *plures*, ut in aliis Rerumpublicarum formis. Ergone licebit subditis, publicæ *libertatis*, vel etiam *salutis* obtentu, *Legum* et omnia juris ac fidelitatis vincula abrumpere, *Legumque* simul et *Regum* auctoritatem intolerando fastu sub pedibus conculcare? atque in tanti facinoris patrocinium, hoc uno *Aphorismo* turpiter abuti, quem crepare solent, et sibi mutuo subinde succinere seditiosi cives, *Salus populi suprema Lex?* Qui fit, ut contra non intelligant, hoc ipso dicto agnosci *Principis* in ipsas *Leges* aliquod imperium? Ita ut ipsi liceat *ex plenitudine potestatis*, ubi cogit necessitas et res moram non patitur, ut ab hostibus externis vel domesticis perduellibus suam subditorumque *salutem* tueatur, strictam *Legum* observationem interim deponere, vel seponere saltem ad tempus: ne ex nimium superstitiosa et intempestiva *Legum reverentia*, seque populumque suum, et ipsas quoque demum *Leges*, in hostium potestatem devenire permittat.

XVIII. Illi Quæstioni, *An Princeps Legibus* a se latis vel confirmatis, et populi consensu approbatis, usuque receptis, *solutus sit;* et quatenus eas (ordinarie) observare teneatur; erit fortasse (si Deus dabit) suus postea locus. Nunc illud tantum quæritur, Nunquid ipsi liceat, *extra ordinem* et in casu necessitatis, pro *salute publica* tuenda, *præter*, vel etiam *contra Leges* aliquid facere. Sic facere licere, idque bona
conscientia, uti *primo* optimorum Regum, in omnium qua 1
patet orbis gentium historiis, exempla probant; et dictat *se-* 2
cundo ipsa ratio, a *Legum* διὰ τὸ καθόλου *defectu*, et eventuum particularium multiplicitate atque incertitudine modo
adducta; et *tertio* satis firmant, quæ de *jure Regum* sunt a 3
[u]*Samuele* disputata, nec possunt commode, (quod tamen est a

[u] 1 Sam. viii.

Salus Populi Suprema Lex. The meaning of the Aphorism is, that the King, in the plenitude of his power, when necessity presses, and delay is impossible, in order to protect himself and his subjects from foreign or domestic enemies, may deviate from a strict observance of the Law; lest a superstitious scrupulousness on this subject should destroy King, People, and Laws, together. [*Præl.* IX. 13.]

18. Whether the Prince is bound by Laws made or confirmed by himself, approved by the consent of the People, and established by usage; and how far he is obliged to obey them in ordinary cases, we may hereafter consider. But we now consider whether in extraordinary

multis tentatum) aliorsum trahi. Ita ne cui hac in re, ex præsente dicto prave intellecto, aliquis aut supersit, aut oboriatur *scrupulus;* liceat mihi quæso celebre hoc dictum ad primam suam *originem* revocare denuo: Et ni id effecero ut fateamini, *salutis publicæ* procurationem posthabitis *legibus,* idque ex sententia istius dicti, ex ipsius *Principis voluntate* sola, nec omnino ex *populi arbitrio,* pendere; cæcutire in clarissima luce, et optimæ causæ non defensorem, sed proditorem et prævaricatorem hactenus fuisse me, existimate.

XIX. A *Romana gente* ad nos defluxisse hoc *axioma* paulo [x]ante dixi: Illud nunc adjicio, in [y]*tertio Marci Ciceronis de Legibus libro,* primo (quod sciam) id scriptum reperiri; haustum tamen (ut ipse *Cicero* testatur) ex veteribus ejus gentis *Legibus,* et ab eo ipsissimis *Legum verbis* descriptum. Is ergo, post descriptas et explicatas libro superiore *Leges* ad *Religionem* et *cultum Deorum* pertinentes, *tertio* demum *libro* pergit ad eas recensendas quæ ad *Rempublicam et Magistratus* pertinent. Ubi, inter alia, hæc habentur verba; Attendite, obsecro; REGIO IMPERIO DUO SUNTO: IIQUE PRÆEUNDO, JUDICANDO, CONSULENDO PRÆTORES, JUDICES, CONSULES, APPELLANTOR. MILITIÆ SUMMUM JUS HABENTO, NEMINI PARENTO. OLLIS SALUS POPULI SUPREMA LEX ESTO. OLLIS,

x [Sect. 15.] y [cap. 3, Sect. 8, ed. Nobbe.]

cases the Prince may, in order to the public safety, do anything beyond, or even against Law.

That he may do so with a good conscience, appears,

First, By the examples of the best Kings, in every history.

Secondly, From considering the defect of Laws arising from their generality.

Thirdly, From what Samuel says of the authority of Kings, 1 Sam. viii.

But let us consider the origin of the Maxim.

19. The Maxim is first found in Cicero's Dialogues *De Legibus,* though drawn, as he testifies, from old Roman Law. In his legislation for his imaginary State, after having in the former Book laid down laws on the Subject of Religion, in the Third Book he proceeds to Government and Magistrates: and propounds this Law:

"There shall be Two with Regal Power; and these shall, from their office, be called Prætors, Judges, or Consuls. They shall command the Military Force; be subject to no one. For them, the Safety of the People shall be the Supreme Law."

For them the Safety of the People shall be the Supreme Law. But what *them?* Them who are invested with Regal Power: them

inquit, (sic enim prisci loquebantur) id est, ILLIS, SALUS POPULI SUPREMA LEX ESTO. Sed quibus tandem *illis?* *Illis* nimirum, qui *regio imperio* præditi erant, qui *militiæ jus summum* habebant, qui supra se potestatem aliquam, cui *parere* deberent, non agnoscebant. Hoc est, *binis Consulibus;* qui etsi ex constitutione illius Reipublicæ annuum tantum Magistratum gerebant, *Urbi* tamen et *orbi Romano cum summo imperio* pro tempore præerant. Adeste hic omnes quoquot estis ubivis gentium, popularis audaciæ patroni aut asseclæ: Legite, relegite totam hanc *periodum;* singulas expendite *sententias, clausulas, commata;* excutite *verbula, syllabas,* minutissimos quosque *apices.* Ubi tandem reperietis, concessæ subditis (*invito Principe*) aut de *salute Populi* judicandi, aut aliquid *contra Leges* faciendi statuendive, potestatis, vel tenue aliquod vestigium? Annon aperte clamat tota hæc apud *Ciceronem* rerum et verborum series, supremam illam auctoritatem, quæ sit omni lata *Lege superior,* adeoque [z]*publicæ salutis* curam universam, ad eum unum spectare proprie, cui et *Regium imperium* competit, et *Militiæ jus summum,* et *ὑπερέχουσα nullique subdita ἐξουσία*? Id quod *Aristoteles* etiam (ut præstantissimorum utriusque Linguæ scriptorum hac in re consensum habeatis,) his verbis expressit, iii. POLIT. II., *Δεῖ τὸν ἄρχοντα, ἄν τε εἷς, ἄν τε πλείους ὦσι, περὶ τούτων εἶναι κυρίους, περὶ ὅσων ἐξαδυνατοῦσιν οἱ νόμοι λέγειν ἀκριβῶς, διὰ τὸ μὴ ῥᾴδιον εἶναι καθόλου δηλῶσαι περὶ πάντων,* id est, *Penes eum qui præest Reipublicæ sive sit unus sive*

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[z] *Salutem Reipublicæ nulli magis convenire, quam Cæsari.* Paulus, Lib. III. F. de Offic. Præf. Vig.

who command the Military Force; and are subject to no one. This was, at Rome, to the Consuls; who, though they were in authority for a year only, were for the time the Rulers of Rome and the Roman world.

The whole texture of the paragraph shews not a trace of any authority granted to the subjects, of acting against Law, or judging of the safety of the People in opposition to the Prince. The *Suprema Lex,* superior to every actual Law, is put in the hands of him who has the *Regium Imperium* and *Militiæ Jus Summum.*

And that you may have the consent of the greatest writer in each language on this subject, Aristotle says: "The Ruler, whether he be one or many, must judge on what subjects the Laws are incompetent to pronounce in particular, on account of the difficulty of including every case in general expressions."

plures, iis de rebus statuendi arbitrium et potestatem esse, de quibus leges accurate [i. e. in particulari] *loqui non possunt, propterea quod non sit facile universe singula complecti.*

XX. Excipient hic fortasse nonnulli, pessime agi cum genere humano, si ex *unius hominis* arbitrio sic penderet *omnium salus,* ut non liceret cuiquam in casu summæ necessitatis eo inconsulto suæ *publicæque saluti* consulere. Quid si ex casu subito et inopino res non patiatur *unius diei* moram? *Princeps* interea aliquot dierum itinere abfuerit? Dum itur, consulitur, reditur, actum erit de *Republica,* si necesse sit in tantis temporum angustiis, et locorum spatiis, *Principis consensum* et veniam expectari. Respondeo, videri et *subditis* aliquid in hoc genere licere, si gravis nec aliter evitanda postulet *necessitas,* idque inconsulto *Principe,* (*Necessitas* enim, quod dici solet, [a] *Legem non habet:*) nego tamen id effici,
1 quod inde aliqui effectum velint. Dico itaque *primo,* quicquid juris hac in re *subditis* competere potest, ut scilicet Legibus posthabitis *publicæ saluti* consulant, id ipsis aliunde accrescere; præsentis autem *Aphorismi* auctoritate, velut fundamento, niti nullo modo posse, qui curandam et procurandam *populi salutem* uni *principi,* relinquit, non autem ipsi *populo* permittit. Deinde aliud esse, *inconsulto Principe,* aliud eo *invito,* aliquid contra Leges attentare: fieri enim illud licere, debitis conditionibus observatis; hoc nulla conditione licere.
2 Dico *secundo;* Subditis, si quid attentare velint in ordine ad

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[a] *Ἔγωγέ φημι καὶ νόμον γε μὴ σέβειν,*
Ἐν τοῖσι δεινοῖς, τῶν ἀναγκαίων πλέον.
Eurip. ap. Stobæum, [Florileg. Tit. xii. p. 140, ed. Gaisford.]

20. Some will object that it is hard upon men that the safety of all should depend upon one person so entirely, that without his permission no one is allowed to act for the public safety, even in a case of extreme necessity. What if he be absent many days' journey, and the matter will not admit of one day's delay? If the consent of the Prince be held necessary, the State is ruined while the previous intercourse with him is yet unfinished.

We reply, *First,* The subjects may, in such a case, even without consulting the Prince, act on the ground of necessity; but that does not establish the opponents' doctrine. Such a power in the subjects does not rest on this Maxim, which commits the care of the Public Safety to the Prince only; such a power in the subject is derived from some other source.

Moreover, it is a very different thing to deviate from the Law without consulting the Prince, and to do so contrary to the will of the

salutem publicam, duas præ ceteris conditiones sanctissime esse observandas: quarum alterutram qui neglexerint, nulla *necessitatis* excusatione se tueri posse. Eas quam sancte observarint, qui funestissimorum in hoc regno motuum vel *auctores* exstiterunt vel *fautores*, dicere non est meum: ipsi viderint. Sunt autem *duæ* illæ *conditiones*, istæ: Altera, ne quid fiat, tenteturve fieri *in Principis præjudicium;* cujus persona et dignitas, interest *salutis publicæ*, ut sartæ tectæ conserventur. Altera, ne quid similiter fiat, fierive tentetur *contra Leges* et jura, nisi *ex Principis consensu:* consensu nempe, vel *expresso*, ubi commode haberi potest, vel (ubi is longius abest, nec res patitur moram,) rationabiliter saltem *præsumpto*. Tunc autem absentis Principis *consensus* rationabiliter *præsumitur;* cum tam magna tamque [b] evidens premit *necessitas;* ut nemo sanus et prudens possit dubitare, Principem ipsum, si ibi tum præsens esset, *Legis* gratiam et *relaxationem subditis* concessurum.

XXI. *Duabus* hisce *conditionibus* observatis, nisi aliunde oboriatur (ex particularibus scilicet circumstantiis,) impedimentum, [c] licere dico *subditis*, pro tuenda adversus exteros

[b] *In manifestis non opus est interpretatione sed executione.* Aquin. 2da 2dæ, Quæst. 120. [Art. ii. 3 conclus.]

[c] *Certum est omnia licere pro patria.* Quintil. Declam. ccclxix.

Prince: the first may be allowable under due conditions; the second under no condition.

Secondly, If the subjects have to attempt anything with a view to the Public Safety, two Conditions must be most sacredly observed; and if either of them be neglected, no excuse of necessity can be any defence.

(Sanderson interposes, How carefully the authors and promoters of the calamitous events which have taken place in this realm have attended to these Conditions, it is not mine to say. Let them see to it.)

The two Conditions are,

First, That nothing be done to the prejudice of the Prince, the preservation of whose person and dignity is essential to the Public Safety.

Second, That nothing be done against established Laws and Rights, except with the consent of the Prince, express or presumed. And the consent of the Prince may, in his absence, be reasonably presumed, then, when there is the presence of so great and evident a necessity, that no sane man can doubt that the Prince, if he were present, would be willing to relax the Law.

21. These two Conditions being observed, we say that it is lawful for Subjects, in order to protect the safety of Prince and People

hostes vel domesticos perduelles, *Principis et populi salute*, ad communem utilitatem spectare magis, quæ *suprema Lex* est, quam ad voces et apices *Legum particularium;* quæ propterea latæ sunt, ut *communi utilitati* inserviant, non præjudicent. Ratio manifesta est: quia *media sunt propter finem*, non finis propter media; et proinde *media* fini inservire debent, non *finis* inservire mediis. Quum ergo *salus publica* habeat rationem *Finis, Leges* autem *Mediorum;* et certum sit in agentis intentione *finem* esse priorem et potiorem *mediis:* utrumque sequitur, et communem *patriæ utilitatem* Legibus quibusque particularibus anteponendam esse; et recte præsumi idipsum sentire *Principem*, qui in ferendis Legibus est *agens principale;* adeoque in omnia illa se inconsulto gesta vel gerenda, *tacite consentire*, quæ (salva ipsius dignitate et jure) pro *communi salute* geri fierive manifesta exigit necessitas.

XXII. Exempla historiæ passim suppeditant: quæ, quum sit rei ipsius ratio tam in aperto, ut minus necessaria prætermitto. Unicum duntaxat, sed illustre illud, dignumque quod Annalibus hujus gentis in æternam hominis memoriam inseratur, quod nostro etiam ævo nostraque aliquorum memoria contigit, adducam: *Vicecomitis* scilicet *Wigorniensis* memorabile factum. Singulis *Angliæ provinciis*, (quas majores nostri *Pagos*, nos *Comitatus* dicere solemus,) præest ad aliquos juris effectus annuus Magistratus, *Vicecomes* dictus, custodiendæ *publicæ pacis causa* potissimum institutus. Huic Magistratui, ad tam grave munus cum effectu obeundum, con-

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against foreign or domestic enemies, to regard Public Utility, the Supreme Law, more than the words and terms of Particular Laws; since these were made to promote, not to prejudice, Public Utility.

The Public Safety is the End, Laws are the Means; and the Means must be subservient to the End. And the Prince, who is the principal agent in the making of Laws, must be presumed to think so, and therefore tacitly to consent to whatever is, without his being consulted, done for the common safety under manifest necessity.

22. There are many examples of this in history: we will take one from our own annals. The Lord Lieutenant of each County in England has the command of the military force of his County, to be used for necessary purposes within the County; but with no authority to pass with armed men beyond the boundary of the County. When the execrable Powder Plot was discovered and defeated, some of the conspirators took refuge in the County of Worcester. They

cessa est (ut par erat) Legibus hujus regni *militem contrahendi* potestas, et cum hominibus armatis quælibet *Comitatus sui* loca, quoties facto est opus, adeundi et perlustrandi : ita tamen, ut ei interim non liceat cum armata manu *Comitatus sui* fines et terminos excedere. Post proditam insperato (summa et singulari Dei benignitate et providentia) execrandam in omne ævum *proditionem pulveream ;* ejus conjurationis conscii nonnulli inque iis e principibus totius scenæ architectis unus et alter, in *agrum Wigorniensem* convenerant. Hos *Vicecomes,* vir strenuus et prudens, collecta armatorum manu, dum hac illac fugitantes persequitur, ad extrema *Comitatus sui* loca simul perventum esset ; veritus ne illi, si is *metu Legum* ibi subsisteret, incolumes evaderent, ausus est (*Lege* non obstante) in *alienum Comitatum* suo confinem militem educere : quo perduelles insecutus, eos in potestatem suam redegit, eorumque primarios cum reliqua turba captivos secum abduxit. Ratus nimirum (id quod res erat,) si vellet *boni civis* officio strenue defungi, sic sibi omnino faciendum : in eo necessitatis articulo intempestivam fore *Legum observantiam ; Supremæ Legi,* hoc est, *patriæ saluti,* parendum ; utilitati publicæ omnia postponenda. Confecto hunc in modum ex animi sententia negotio, ne eo *exemplo* (quod *necessitati* imputandum fuit,) publicarum Legum vilesceret auctoritas ; quinetiam gnarus quam gravi pœnæ obnoxii sint in *rigore juris* istiusmodi *Legum violatores :* non satis existimavit vir prudens, in sola recte facti conscientia acquiescere ; nisi et suæ in posterum *securitati* consuleret, et

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were attacked by the Lord Lieutenant of Worcestershire, [Sir Richard Walsh], and pursued to the edge of the County. If he had stopped there through fear of the Law, they would all have escaped : but he ventured to take his troops into the next County [Stafford], where he took the principal of them prisoners. He rightly judged, that in such a critical necessity, the observance of the Law was unreasonable. He acted with an eye to Public Utility, and made everything bend to the Supreme Law, the safety of the Country. But having done this, in order that the Authority of the Law might not fall into slight in consequence of this example, justified by its special necessity ; and knowing what a grave legal offence his was, according to the rigour of the Law, he was not satisfied to rest in his good conscience as to what he had done, but took care to provide both for his own safety and for the prevention of evil from the example. He forthwith hastened to the King (James I.), begged for his pardon, and, as was reasonable, obtained, not so much pardon for having violated the Law, as praise for having preferred to it the public safety.

nequis ipsius *exemplo* ad audacius aliquid fortassis attentandum abuteretur quantum in se esset caveret. Confestim itaque ad Regem advolat, (fuit is felicis memoriæ serenissimus *Rex Jacobus,*) ad ejus genua provolutus, *violatæ Legis* veniam supplex petit: Et prout commeritus est, a Rege prudentissimo, non tam *spretæ Legis* veniam, quam antehabitæ *publicæ salutis* laudem, impetravit.

XXIII. Exposui jam vobis, Auditores, ut amicis quibusdam obsequerer, aliquanto fusius quam soleo, quid mihi videter de isto *Axiomate* sentiendum, *Salus Populi Suprema Lex:* Simul ut os obturetur importunis hominibus, qui (ut cum [d] *Salomone* loquar,) *e naso nimium compresso eliciunt sanguinem:* hoc est, qui ex sententia, pia sane (si et sane intelligatur,) atque publico salutari, perverse interpretando sensum eliciunt impium, et rebus humanis pernitiosum. Summa totius rei, ut in pauca contraham, huc redit. Non si *lædantur,* aut injuria afficiantur privatæ aliquot *personæ;* non si sua sint *subditis,* de quibus etiam merito conqueri possint, publica quædam *gravamina;* decurrendum est statim, quasi actum aliter esset de *Salute populi,* ad remedia adhibenda extraordinaria, et quæ sint *contra Leges.* Quod si justus sit metus, ab *externis hostibus* aut *seditiosis civibus* oppressam iri *Rempublicam,* nisi aliquid fiat, quod *Legibus* non est permissum: *Principi* fas est, ex Potestatis suæ *prærogativa,* imo *Subditis* fas est, ex præsumpta *Principis voluntate,* (modo nihil fiat in ipsius præjudicium,) præsente necessitate ita postulante, a verbis et sententia *particularium Legum* recedere, ut periclitanti *patriæ* subveniatur, ejusque *saluti,* ut *supremæ Legi,* inserviatur. Pergam propediem (si Deus permiserit et commode potero) quæ reliqua sunt persequi, *Gratia Domini nostri Jesu Christi, etc.*

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[d] [Proverb. cap. xxx. vers. 33.]

23. And thus we see the true sense of this Maxim.

Sanderson adds, "I shall proceed (if God permit, and I conveniently can), to pursue the remainder of this subject.

The Grace of our Lord Jesus Christ, &c."

HUCUSQUE, postquam ventis vela dedissem subtristi licet cœli facie, incolumis tamen (Deo auspice) in instituto cursu processeram, jamque altum mare tenebam; certus, si per tempora liceret, qua ire occœperam pergendi: cum coorta ante oculos sæva tempestas, et jam propius adventare visa, admonuit, parum tutam fore in posterum omnem in alto navigationem. Sensi itaque nova protinus mihi capienda esse consilia, nec nisi mallem ventis debere ludibrium, in undoso et periculoso mari moram trahendam longius. Vela ergo confestim retrorsum dedi, et navim mature subduxi in portum. Namque et mihi paulo honestius visum est, gradu cedere, quam depelli: et rebus meis longe salutarius, privatos intra lares in otio et in umbra vivere, quam in Foro vel Theatro cum invidia et metu versari.

HINC EADEM FINIS DISCRIMINIS ATQUE LABORIS.

[But he was not permitted to do so. The following paragraph must have been added at a later period.]

When I had pursued my intended voyage so far, though under a lowering sky, yet by the blessing of God, safe from harm; and was now far advanced in my subject, and secure, if the times had allowed it, of reaching my destined point; the fierce tempest which arose and drew nearer and nearer, warned me, that for the future, sailing in the open ocean [public lecturing, as I suppose] was by no means safe; I perceived that I must change my course, and not linger in that rough and dangerous sea, except I were willing to be wrecked. I sailed back again, and sought shelter in port. It appeared to me more decent to withdraw than to be thrust out: and better, for my private condition, to live at leisure in retirement, than to take a place in the Forum or the Public Assembly, the regions of hatred and fear.

INDEX

LOCORUM SACRÆ SCRIPTURÆ

QUÆ IN PRÆLECTIONIBUS AUT LAUDANTUR AUT ILLUSTRANTUR.

INDEX

AUCTORUM IN PRÆLECTIONIBUS CITATORUM.

INDEX

NOMINUM ET RERUM.

EMENDANDUM IN CONTEXTU.

Præl. I. Sect. 3: Pro, *obligetur in conscientia,* lege *obligetur quis in conscientia.*

ADDENDA NOTIS.

Præl. I. Sect. 3: ad v. *Bernardi* adde, [Tract. de Interiori Domo, cap. xi. Opp. Tom. II. p. 341 A.]

.... 5: ad v. *Nonium,* adde, [de Proprietate Sermonum, p. 456, ed. Antverp. a. 1565.]

.... 28: ad vv. *Equidem nihil hinc diffindere possum,* adde, [ex Horat. Lib. II. Satir. i. v. 79].

Præl. II. Sect. 7: ad v. *Josephus,* adde, [conf. *de Jur. Obligat.,* Præl. V. Sect. 7.]

Præl. IV. Sect. 12: ad vv. *iniquo secernere justum,* adde [ex Horat. Lib. I. Sat. iii. v. 113.]

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